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TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

No. ~~320.~~ 62

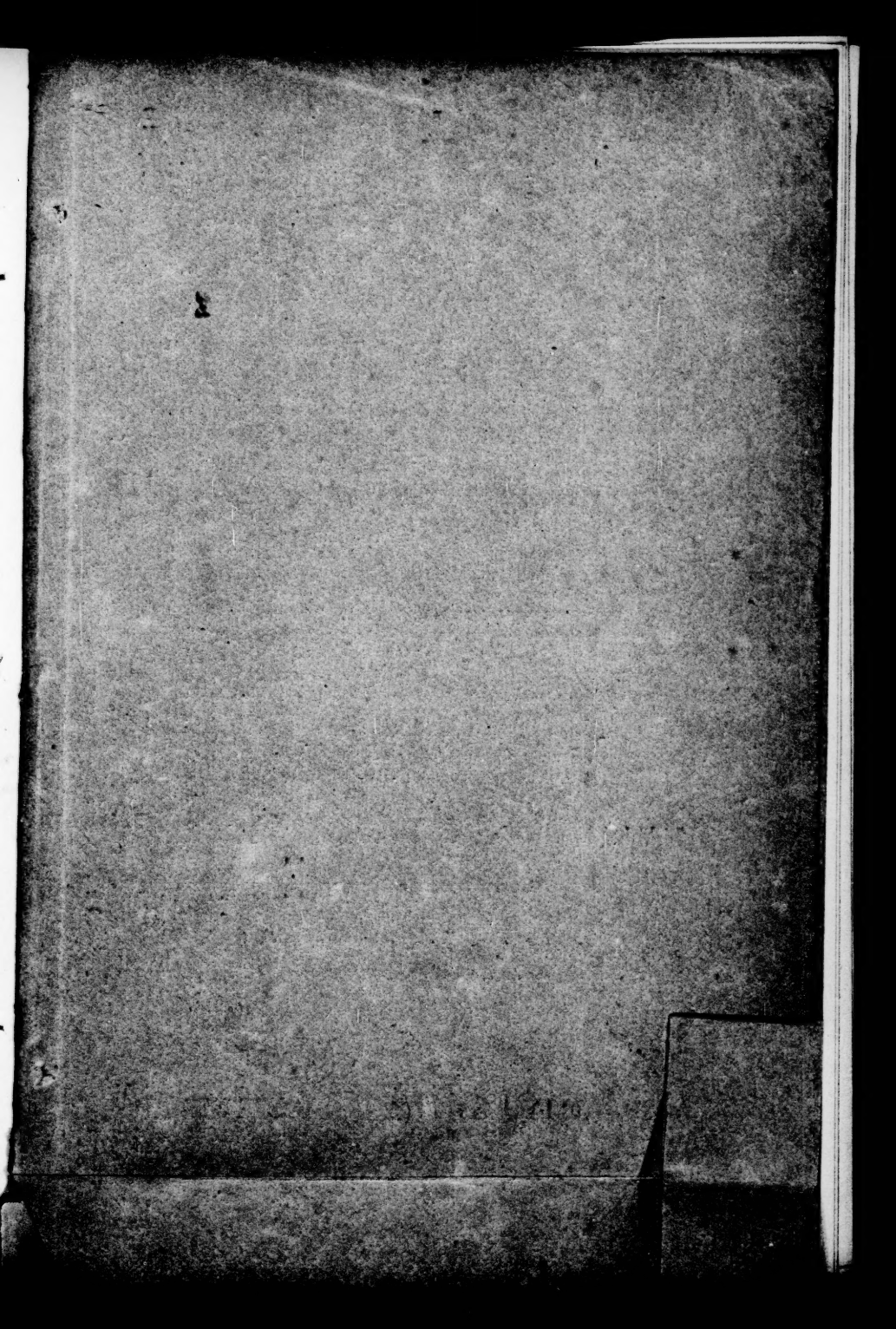
ALBERT BOULDIN ET AL., APPELLANTS,

vs.

JOSEPH ALEXANDER ET AL.

APPEAL FROM THE SUPREME COURT OF THE DISTRICT OF COLUMBIA

FILED OCTOBER 19, 1877.



SUPREME COURT OF THE UNITED STATES.

No. 320.

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1 *Execution of writ stayed Mch 6, 1877.*

In the supreme court of the District of Columbia, March 6th, 1873.

JOSEPH ALEXANDER
vs.
ALBERT BOULDIN ET AL. } 1054. Equity docket 8.

On this 6th day of March, 1873, the above-entitled cause coming on to be heard, upon the application of the complainants, by Thomas Wilson their attorney, for a writ of habere facias possessionenus as set forth in the decree passed in said cause, it is ordered that said writ be not issued until the coming in of the report of the auditor, the further order of this court, and by the consent in open court of the defendants, by their attorneys, Messrs. Moore and Carrington, the order of reference to the auditor is made to include the following additional questions:

3. In whose possession has the church building and property on the corner of 4th & L st's, Washington, D. C., been since commencement of this suit?

4. What is the fair value of the rents, issues, and profits arising and accruing to the party in possession of said property from and since this suit?

2 *Auditor's report.—Filed Nov. 10, '75.*

In the supreme court of the District of Columbia.

JOSEPH ALEXANDER ET ALS.
vs.
ALBERT BOULDIN ET ALS. } 1054. In equity, doc. 8.

On the 2d day of June, 1869, this cause was referred to the auditor of the court to examine and report the facts upon the following questions:

"1st. Whether the defendant Albert Bouldin purchased, under the direction of the church, the entire lot of ground on the corner of 4th and L streets, of George H. Varnell, for the use and benefit of said church, and whether the money collected by said Bouldin from or on behalf of the church was by him used to aid in the payment for said lot; and, if so, to what amount.

"2d. To state the account between the said Albert Bouldin and the plaintiffs, as trustees of the said church, and the trustees of whom they are the successors; to report the amounts of money received by said Bouldin from the said church, and from other persons on behalf of
3 said church, and the amounts to which he was entitled for his services in behalf of said church, and has expended therein, and about the same, and to state the balance due either way, and for these purposes that he may call witnesses and take testimony."

On the 6th day of March, 1873, the court made a further order of reference to the auditor, to include the following additional questions:

"3rd. In whose possession has the church building and property on the corner of 4th and L streets, Washington, D. C., been since commencement of this suit?

"4th. What is the fair value of the rents and profits arising and accruing to the party in possession of said property from and since the commencement of this suit?"

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The first order of reference cited is a portion of decree rendered by the equity court on the 2d day of June, 1869, deciding that the plaintiffs were the lawful trustees of the church property in controversy in this suit; that they were entitled to the possession of the church building situated on the corner of 4th and L streets n. w. It directed
4 the delivery of the possession thereof by the defendants unto the plaintiffs. It also enjoined the defendant Bouldin from proceeding to the collection of the notes given to him by the plaintiffs, as trustees, either by a sale under the deed of trust or otherwise.

A mistake was found to exist in the description of the land in the deed of conveyance from Bouldin to the trustees, which was also corrected by said decree.

From said decree the defendants appealed to the general term, by which it was affirmed Nov. 8th, 1869, and again appealed to the Supreme Court of the United States, where it was again affirmed; the opinion of the court by Mr. Justice Strong is reported in 15th Wallace.

By this decree and its affirmance all the real matters in litigation were settled and determined in favor of the plaintiffs.

On the 3rd day of June, 1873, Walter S. Cox, esqr., then auditor of the court, gave notice that he would proceed to a hearing under the reference. No further proceeding in the case was had before Aud-
5 itor Cox, who resigned his office of auditor, and Hon. Robert Leech appointed his successor, who on the first day of July, 1873, proceeded to the taking of testimony by the examination of witnesses produced on the part of the plaintiffs. The direct examination of the witnesses appears to have been concluded on that day (with an unimportant exception). The cross-examination of all of them seems to have been postponed until the conclusion of the direct examination of all the witnesses, and does not appear to have commenced until January 6th, 1874, and was closed Feb'y 16th, of that year.

By agreement of counsel the testimony was to be taken by a phonographic reporter; that taken on behalf of the plaintiffs was paid by them, and has been filed with the auditor, a bill for this testimony is returned as part of the cost of the case.

The present auditor has no personal knowledge, but understands, and it seems to be an admitted fact, that upon the close of the plaintiffs' testimony, Feb'y 16th, 1874, the defendants proceeded to take their testimony. How many witnesses were examined and how many ad-
6 journments had, the auditor has no means of knowing. But on the 23d of November, 1874, the equity court, on motion of the plaintiffs' solicitor, ordered that the defendants close their testimony on or before the first day of December, 1874. This order was afterwards extended to January 1st, 1875, and again to Jan'y 20, 1875; and again by consent of plaintiffs' counsel to Jan'y 21st, and again to Jan'y 23rd. Another application for extension being made on the 24th Feb'y, 1875, was denied by the court, and yet another application was made on the 15th Sept., 1875, which was also denied by the court.

Whatever testimony may have been taken before the auditor by or on behalf of the defendants, has not been filed with the present auditor, although he adjourned the hearing before him from May 31st, 1875, to June 7th, then to June 12th, then to June 22nd, then to June 29th; all of said adjournments were had at the request of defendant, Bouldin and his counsel promising at each meeting to produce and file their testimony at the next hearing indicated by these several adjournments. In justice to the plaintiffs' solicitor, the auditor should say, he has entered
7 his consent to the presentation and filing of defendants' testimony

with the auditor at any time before the making of his report, and although the case has been kept open for the reception of this testimony since the early part of June until now, in October, yet it has not been presented, and the auditor is reluctantly compelled to decide the case without it. I proceed now to the examination of the questions propounded in the order of reference.

It appears from the pleadings and proofs in the case that the defendant Bouldin in 1859 or thereabouts made a bargain for the purchase of a piece or parcel of land, being a part of lot 2 in square 525, fronting 78 feet 4½ inches on L street and 84 feet on Fourth street. The church is built upon the corner of 4th and L streets and occupies a portion of this lot, to wit, 34 feet on L st.; the balance, being the difference between 34 ft. and 78 ft. 4½ in., to wit, 44 ft. 4½ inches fronting on L st., has been sold or used by the defendant Bouldin for his own private purposes.

8 One of the questions propounded in the first interrogatory in this reference to the auditor, is whether the defendant Bouldin purchased this entire lot for the use and benefit of the church. The object of this question appears to be to know whether the defendant Bouldin should be held to account to the plaintiffs as trustees of the church for the profits arising from the sale of so much of this lot of ground as he did not afterwards sell or convey to the church. Your auditor finds as a fact that Bouldin did not purchase this entire lot of ground for the church or for its use, and that the church is not entitled to an accounting by him of the profits arising from the 44 feet 4½ inches fronting on L street not occupied by the church, and conveyed by Bouldin to Nelson Connor, Emeline Clark & William Danderson.

The plaintiffs claim that the church bought, and that Bouldin sold to it, the piece of ground situated on the corner of the square fronting 34 feet on L street and running back 84 feet, or the entire depth of the lot on 4th street. The deed of conveyance describes only 64 feet on

9 4th street; this is claimed by the plaintiffs to be erroneous and a misdescription. No dispute or misunderstanding seems to have arisen between the parties respecting this 20 feet of ground in the rear of the church on 4th st., until after the commencement of this suit. The church was built in 1863; it runs back a distance of 55 feet; soon after the erection and completion of the church in 1863, the church enclosed this entire lot of ground, running to the back end of the lot, with a substantial board fence, the back door of the church opening into this enclosure; Bouldin occupied, one summer, a portion of this enclosure for a garden, but upon the request or protest of some of the members of the church he gave it up and did not use it further.

The church continued the use and occupation of this lot from the time of its enclosure until after the commencement of this suit. It seems to have always claimed the right of use and occupation as incident to its ownership; neither Bouldin nor any of the defendants during this period of several years denied this right of possession in the church.

10 The presumption in favor of the deed of conveyance which describe' but 64 feet instead of 84 feet as claimed by plaintiffs, and the like presumption arising against the plaintiffs by their having accepted such a deed, is largely qualified by the facts in the case. It clearly appears the plaintiffs were not men of sufficient education to enable them to make and intel'igent examination of the deed, and to determine from an inspection thereof whether it was correct or incorrect; again, it appears the deed itself is entirely erroneous in its description of the land intended to have been conveyed, and to have described land lying in the street and not in the square or in the place which was in-

tended. The latter has been determined by the court in its decree herein correcting this description in the deed, and making it to cover land in the square occupied by the church as intended, instead of that in the street, as described in the deed.

In view of the facts in the case already referred to, as well as other facts appearing in the testimony showing the relation the parties
11 at the time of this conveyance sustained to each other—that of pastor (who is shown to have been the man of business for the church) and the officers or trustees of the church, the latter then having entire confidence in the former, entrusting him with almost the entire temporalities of the church for many years, and until the differences occurred between them, resulting in this suit—when it was first discovered that the deed purporting to convey the land on which the church building was erected, as well also as the land enclosed in the rear of the church, was wholly erroneous in its description of the land intended to be conveyed by it, it was then for the first time made to appear to these contracting parties that, among other errors, said deed purported to convey but 64 feet in depth and not 84 feet, all interested therein, plaintiffs and defendants, by the building of their church, the enclosure and occupancy of the entire 84 feet on 4th street in connection with their church, up to the time the imperfection in the deed was dis-
12 covered, regarded and treated this entire piece of ground as belonging to the church, and there is nothing except the mere mention in this very imperfect deed of 64 feet which shows to the contrary. Your *orator* therefore finds that, in the purchase and sale made between Bouldin and the church, the church bought and Bouldin sold the piece of ground situate on the corner of the square fronting 34 feet on L street and running back 84 feet or the whole depth of the lot on 4th street. I further find that these twenty feet of ground, being the difference between 64 feet and 84 feet in the rear of the church, has been sold by Bouldin since the commencement of this suit to one Robinson, who has erected valuable improvements thereon. The plaintiffs, therefore, can recover only the price or value thereof from Bouldin, but cannot recover the specific ground. I therefore allow the value thereof to the plaintiffs in his statement of accounts, which value he arrives at in this wise: 20x34=680 feet, at 60c., the value per foot, gives as the total valne the sum of $408.00.

13 The second paragraph in the order of reference of June 2d, 1869, and the third and fourth paragraphs in the order of March 6th, 1873, require a statement of the monetary accounts between these parties. The books containing the accounts kept by both parties have been submitted to the auditor; the bad writing and imperfect manner in which they have been kept renders it impossible to state these accounts with certainty. The length of time which has elapsed since the transactions took place, the great number of persons connected with and interested therein, have conspired to render intricate the statement of the accounts as set forth in the books rather than elucidate them.

The plaintiffs admit six notes, dated July 28, 1862, five of which were for 100$ each and one for 120$ and to this the defendant Bouldin agrees.

The plaintiffs further admit four notes for 400$ each, dated December 20, 1865; the defendant Bouldin asserts there were six notes of this
14 date for 400$ each; these notes have not been introduced in evidence by the defendant and have not been seen by the auditor. The late auditor, it seems, did not require the production of these notes when taking the testimony; holding the defendants had the right to

choose the order in which he would put in his proofs, and he might put these notes in evidence before he closed his testimony, but the testimony on his behalf was closed by order of court. The solicitor for the plaintiffs, however, has consented to their introduction at any time up to the making of this report. Not only is there a question as to whether there are four or six of the 400$ notes, but contests and disputes have arisen as to the amounts paid on these notes. The plaintiffs averred their inability to say how much had been credited on their backs; so in their absence the number of the notes, the amounts they represent, together with the endorsements or credits made thereon, must remain in doubt until they shall be presented and these important facts definitely ascertained.

15 The auditor finds that certain payments have been made by the plaintiffs to the defendant Bouldin for and on account of these different , which payments are set forth in his statement hereto appended, marked Exhibit A.

The 400$ notes appear to have been executed by the plaintiffs to the defendant Bouldin at the conclusion of a settlement made between them upon the occasion of the completion of the church or about that time, and which I have treated as a settlement in full to that date, December 20th, 1865. I have therefore confined this statement of accounts to the transactions between the parties subsequent to that date.

The entire failure of the defendant Bouldin to introduce these notes in evidence (a matter so manifestly to his benefit) suggests the possibility that Bouldin may have sold or transferred all or a part of them, and thus placed them beyond his control, and therefore was and is unable to produce them. Being obligations of this character or subject to transfer or assignment, it would be manifestly improper to allow credits for them or the amounts they represent in favor of Bouldin, he

16 having failed to put them in evidence in this case, or submitted proofs accounting for the*re* absence. I therefore have not allowed in favor of Bouldin either the principal or interest of the amount of these notes.

In answer to the 3rd question in the order of reference (March 6th, 1873), I find that the defendants have had possession of the church building since the 28th Sept., 1867, and still hold possession. As to the 4th question, there is some difficulty in arriving at the value definitely; there being no proofs on that subject nor any custom or price in the market governing the rental of church property, as in the case of dwelling and business houses.

The rate I have adopted and which I regard as fair and just is the rate adopted by the Quartermaster's Bureau during the war, in the occupation by the government of property which had no fixed or definite rental value. It is, that arriving at the par value of the property, allow as the rental value 6 per cent. per annum thereon. I find the value

17 of the ground to be sixty cents per foot.

2,176 feet, 60c..	$1,305 60
Value of church building	7,000 00
Total value	$8,305 60

The above total at 6 per ct. per annum gives a yearly rental value of $498.33, and the gross total amount for eight years to Sept. 28, 1875, three thousand nine hundred & eighty-six $\frac{64}{100}$ dollars. Regarding this rental as payable quarterly, I allow interest on each quarterly payment

as the same became due and payable, and have appended hereto a tabular statement showing the rental account as above indicated. See Exhibit A, which shows the total claim of plaintiffs against the defendants as appears by the proofs in the case and as found by the auditor, except the costs incurred on the hearing before the auditor, as shown by Exhibit B, appended.

All of which is respectfully submitted.

THOMAS HOOD,
Auditor.

NOV. 10, 1875.

18

EXHIBIT A.

Moneys paid to or collected by Bouldin, and to be credited on the notes given by plaintiff to him.

1866.				
Aug. 4.	Paid	$76 64		
	Interest to Nov. 1st, 1875, 9 y'rs, 2 m's, 27 d's	42 50		
				$119 14
Oct.	Paid	105 25		
	" " " " 9 " "	56 83		
				162 08
Oct.	Paid " " " " " "	25 20		
	" " " " " "	13 61		
				38 81
Dec. 2.	Rent of church collected by Bouldin from Lincoln Lodge	4 00		
	Interest on same 8 y'rs, 10 m's, 29 d's	2 14		
				6 14
" 8.	Paid	29 35		
	Interest 8 y'rs, 10 m's	15 67		
				45 02
" "	Do	20 00		
	Do. 8 " 10 "	10 67		
				30 67
" 31.	Do	26 00		
	Do. 8 " 9 "	13 65		
				39 65
1867.				
Feb'y 7.	Do	7 00		
	Do. 8 " 7 " 24 d's	3 53		
				10 53
" "	Do. Lincoln Lodge	4 00		
	Interest 8 y's, 7 " 24 "	2 08		
				6 08
" 20.	Collected by Bouldin from the show	2 00		
	Interest 8 y's, 8 mo's, 11 d's	1 04		
				3 04
Mar.	Paid	250 00		
	Do. 8 " 8 "	130 00		
				380 00
2.	Mass meeting	1 50		
	Interest 8 " 7 mo's, 29 "	78		
				2 28
11.	Mass meeting	2 45		
	Interest 8 y'rs, 7 mo's, 30 "	1 27		
				3 72
20.	Mass meeting	2 00		
	Interest 8 y'rs, 7 " 11 "	1 03		
				3 03
19 1867.				
Mar. 28.	Mass meeting	2 00		
	Interest 8 y'rs, 7 mo's, 3 d's	1 03		
				3 03
Apr. 8.	Mass meeting	10 76		
	Interest 8 " 6 " 23 "	5 53		
				16 29
" "	School	10 00		
	Do. 8 " 6 " 23 "	5 14		
				15 14
" 08.	Paid	71 95		
	Do. 8 " 6 " 23 "	36 97		
				108 92
" 18.	Mass meeting	2 00		
	Do. 8 " 6 " 13 "	1 02		
				3 02
" 24.	Paid by John Wiggins	35 10		
	Interest 8 y's, 6 " 7 "	17 90		
				53 00
" " "	Winters	50 00		
	Interest 8 " 6 " 1 "	25 51		
				75 51

May	6.	Mass meeting		3 89	
		Do. 8 " 5 " 25 "		1 98	
					5 87
	5.	Mass meeting		43 85	
		Do. 8 " 5 " 26 "		22 38	
					66 23
	29.	Do. do.		4 00	
		Do. 8 " 5 " 2 "		2 02	
					6 02
June	1.	School		10 00	
		Do. 8 " 5 "		5 05	
					15 05
Mar.	1.	Do.		10 00	
		Do. 8 " 8 "		5 90	
					15 90
					1,233 47

20 Rent, $492.33 per annum; qr. payments, $124.58.

1867.	3d	qr.,	Sept.	28	to Jan. 1	$124 58	57 95
1868.	1st	"	Jan'y	1	" Apr. 1	124 58	56 07
"	2nd	"	Apr.	1	" July 1	124 58	54 21
"	3rd	"	July	1	" Oct. 1	124 58	52 32
"	4th	"	Oct.	1	" Jan. 1, '69	124 58	50 46
1869.	1st	"	Jan.	1	" Apr. 1	124 58	48 60
	2nd	"	Apr.	1	" July 1	124 58	46 74
	3rd	"	July	1	" Oct. 1	124 58	44 84
	4th	"	Oct.	1	" Jan. 1, '70	124 58	43 05
1870.	1qr.	"	Jan.	1	" Apr. 1	124 58	41 19
	2nd	"	Apr.	1	" July 1	124 58	39 33
	3rd	"	July	1	" Oct. 1	124 58	37 37
	4th	"	Oct.	1	" Jan. 1, '71	124 58	35 45
1871.	1	"	Jan.	1	" Apr. 1	124 58	33 59
	2	"	Apr.	1	" July 1	124 58	31 73
	3	"	July	1	" Oct. 1	124 58	29 87
	4	"	Oct.	1	" Jan. 1, '72	124 58	28 01
1872.	1	"	Jan.	1	" Apr. 1	124 58	26 16
	2	"	Apr.	1	" July 1	124 58	24 28
	3	"	July	1	" Oct. 1	124 58	22 42
	4	"	Oct.	1	" Jan'y, '73	124 58	19 77
1873.	1	"	Jan.	1	" Apr. 1	124 58	17 91
	2	"	Apr.	1	" July 1	124 58	16 05
	3	"	July	1	" Oct. 1	124 58	14 19
	4	"	Oct.	1	" Jan. 1, '74	124 56	13 05
1874.	1	"	Jan.	1	" Apr. 1	124 58	11 19
	2	"	Apr.	1	" July 1	124 58	9 33
	3	"	July	1	" Oct. 1	124 58	7 47
	4	"	Oct.	1	" Jan'y 1, '75	124 58	5 58
1875.	1	"	Jan.	1	" Apr. 1	124 58	3 72
	2	"	Apr.	1	" July 1	124 58	1 71
	3	"	July	1	" Oct. 1	124 58	
						3,986 64	923 62

21 20 feet of ground on north end of lot, valued at $408 00
Interest thereon from Sept. 22, 1867, to Sept. 28th, 1875, 8 y'rs, @ 6 %..... 195 84
$603 84

RECAP'ULATION.

Credits	$1,233 47
Rents from Sept. 28th, '67, to Oct., 1875, and interest	4,910 26
20 feet of ground, 688 feet, @ 60	408
Interest	195 84
	$6,747 57

THOMAS HOOD, *Auditor.*

22 SCHEDULE B.

For services of Robert Boswell taking stenographic report of depositions for plaintiff on hearing before Judge Leech, late auditor, p'd by plaintiff's att'y.	$101 84.
" services of Robert Boswell taking stenographic report of depositions of 67 witnesses before Judge Leech, late auditor, taken for defendant, which remains unpaid	177 46
Fees of Robert Leech, late auditor, for services taking testimony, hearing cause, &c	150 00
Fees completing audit by present auditor	150 00
	579 30

THOMAS HOOD,
Auditor.

23 WASHINGTON, D. C., *April* 6.

ALEXANDER ET AL.
vs.
BOULDIN ET AL. } Equity. No.

Jos. Alexander et al., plaintiffs, Thomas Wilson, att'y for plaintiffs, to Robert J. Boswell, Dr.

For stenographic work taking deposition of one witness in the above entitled cause:
13 pages, @ 38 c'ts per page $4 94
Received payment,

ROB'T J. BOSWELL.

24 WASHINGTON, D. C., *February* 16, 1874.

ALEXANDER ET AL.
vs.
BOULDIN ET AL. } Equity. No.

Jos. Alexander et al., plaintiffs, Thomas Wilson, att'y for plaintiffs, to Rob't J. Boswell, Dr.

For stenographic work taking depositions of eight witnesses in the above entitled cause:
268 pages, @ 38 c'ts per page $96 90
Received payment,

ROB'T J. BOSWELL.

25 WASHINGTON, D. C., *October* 11, 1875.

ALEXANDER ET AL.
vs.
BOULDIN ET AL. } Equity. No.

Albert Bouldin and others, defendants in the above entitled cause, to Rob't J. Boswell, Dr.

For stenographic work taking deposition of 67 witnesses in the above entitled cause:
476 pages, @ 38 c'ts per page $177 46
Received payment.

26 Law Building, Fifth street. Counselor at law.

WASHINGTON, D. C., *Nov.* 10, 1875.

ALEXANDER ET AL.
vs.
BOULDIN ET AL. }

To Robert Leech, auditor, Dr.

For services taking testimony, hearing cause, &c $150 00

27 *Testimony before auditor.—Filed Nov.* 10, '75.

AUDITOR'S OFFICE, *July* 1, 1878.

WILLIS J. MINER, a witness of lawful age, being duly sworn, deposes and says:

Examined by Mr. WILSON:

Q. Are you one of the complainants to this suit?

A. Yes, sir.

Q. Are you the same man who was examined under that name once before?

A. Yes, sir.

Q. How long have you been a member of the 3d Baptist Church?

A. I have been a member of the 3d Baptist Church since 1862.

Q. Were you one of the parties to whom Mr. Bouldin made the deed for the church property on the corner of 4th and L streets?

A. I was one of the trustees.

Q. Were you one of the parties to the deed in which you bought the property from Albert Bouldin?

[At this stage of the case, it is agreed between the counsel for
28 the parties that all questions and answers are objected to and exceptions may be taken thereto as in proper time, except as to the form thereof, which exceptions must be taken at the time the questions and answers are asked and given.]

(Mr. Wilson refers to the deed from Bouldin to the trustees of the 3d Baptist Church, on page 4 of the printed record of the supreme court in this case, and asks the witness whether he is the party named in that deed, under the name of Willis J. Miner.)

A. I am the man it has reference to, sir.

* * * * * *

Q. Who was the chief managing man in carrying on the building of the church?

A. Brother Bouldin.

* * * * * *

Q. How was the money collected that was used in the erection of the church and defraying other necessary expenses?

A. Well, by public collections, and by begging, &c.—by contributions of the members.

29 Q. Public collections in or out of the church?

A. In the church as well as out.

Q. When the money was collected in the early part of the history of the church, what was done with it?

A. It was paid over to Brother Bouldin generally, to relinquish the debt on the church property.

Q. Was there any directions given to him, as you understand, as to what was to be done with any particular portion of it?

A. With all the money?

Q. All the moneys, yes; with the exception of his salary. Was the money collected and paid to Bouldin to be accounted for by him as the treasurer or as the representative of the church?

A. Well, I can tell you just how that was, sir; in gathering up this money, generally, Brother Bouldin was the holder and the head trustee of the building. Whenever he called for a certain portion of money, or whenever there was money raised, of course it was supposed to
30 be turned into the treasury. We had a treasurer, and he re-

ceived a great deal of this money, and money was paid over to him and sometimes to Bouldin.

Q. After this money was collected and paid there to the treasurer or to Brother Bouldin, and after the church was built, I want to know of you whether or not you know of there having been any settlements made between the church on the one hand and Brother Bouldin on the other, on account of these moneys, which were either collected by him or paid over to him, and used by him in the purchase of the ground, or in the building of the church, and whether there were any notes given.

A. Are you asking me that question?

Q. Certainly, sir.

A. There was a settlement made at one time; I disremember exactly the date, but there was at settlement made up by some of us—Mr. Post, Chancey Leonard—I do not know the other one; I disremember exactly,
but there was at settlement at that time, and all the moneys were
31 accounted for that had been paid over to him, and paid out; also
there were notes given on the ground and on the house. I think here were six $100 notes and four $400 notes.

Q. Do you know anything about payments being made upon those notes after they were given? Did you keep a book, or do you know yourself of payments having been made upon them?

A. I know payments were made on some one or two of the notes, and there was other payments made of which I have not a record. I am satisfied that one of the notes was paid. I am inclined to think that two of them were paid. I am satisfied that there was a payment made on the second or the third.

Q. Which one of those notes do you mean; the $100 or the $400?

A. The $100.

Q. In the settlement, what were the 6 $100 notes given for; the round, house, or the church debts?

A. For the ground.

Q. With whom was this settlement made?

32 A. With Brother Bouldin.

Q. Which were given upon the settlement by Mr. Leonard and Mr. Post?

A. The $400 notes.

Q. They were the last ones, then?

A. Yes, sir.

Q. Now, did you ever hear, about the time of the split, or before, Mr. Bouldin asked or requested the payments from the congregation or from the trustees—on account of these six—I mean not on account of his salary—did he, in all those requests, say, or did he not say, how much the church was indebted to him? This was along about the time of the split?

A. Yes, sir; I have heard him speak of it several times.

Q. Where was he speaking of it, and what did he say?

A. I heard him speak of it in the pulpit several times, and I heard him speak of it in the deacon board several times. He was speaking
in reference to the amount due him on the property. He re-
33 quested the church to raise the money. The amount in the last
claim, as I recollect, was $2,400.

Q. How many times did he make such statements as that? Do you think you heard him once or twice, or a dozen times?

A. I do not remember the number of times, but I have heard him make use of it several times.

* * * * * * *

Q. How long has Brother Bouldin had possession of this church and this property—I mean the church and other property—since the split?

A. He has had it since the latter part of 1867; I think it was in the latter part of 1867.

Q. Did he not, he and his party, those, I mean, who worship with him, have possession of it for purposes of worship ever since the fall of 1867?

A. I believe he has, sir.

Q. This suit was commenced the 28th of September, 1867. Who had it then?

A. We all were in possession of it when the split commenced.

Q. But I mean at the time this bill was filed here; who was in
34 possession of it then?

A. Mr. Bouldin was in possession of it then.

Q. I mean after the little red-shirted fellow opened the doors?

A. This suit did not commence until after he had taken entire possession of it.

Q. Who?

A. Mr. Bouldin.

Q. Since that time, since he took possession of it, and about the time of the commencement of this suit, has he or has he not held possession of the church property, and he and his party worshipped there ever since?

A. Yes, sir.

Q. Do they still worship there?

A. Yes, sir.

35 JANUARY 7, 1874.

Cross-examination of WILLIS J. MINOR, by Mr. MOORE:

Q. Do you read and write?

A. Yes, sir; a little; but I am not very good at it; that is, I do not read and write readily.

Q. Were you one of the trustees of the old Baptist church?

A. Yes, sir.

Q. About what time did you begin to act in the capacity of a trustee of that church? What year was it?

A. In the latter part of 1862 or early in 1863.

Q. While you acted there as trustee, was the church in the habit of raising moneys for purposes of the church from time to time?

A. Yes, sir.

Q. While you acted as trustee, who was treasurer of that church?

Mr. WILSON. I object; the records will show.

A. Brother Alexander was the treasurer at that time.

Q. Which one of the Alexanders?

36 A. Joseph Alexander.

Q. It is the one who is alive; Charles is dead, I believe?

A. Yes, sir; it was Joseph Alexander; that is as well as I can remember.

Q. Who came in after him?

Mr. WILSON. I object.

A. Joseph Alexander was treasurer for some time, and after him Sister Bouldwin; that is as well as I remember.

Q. Well, when the church raised money for the purpose of defraying the expenses of the church, to whom was that money paid; was it paid to the treasurer?

A. Yes, sir; some was paid to him, and some was not. Sometimes money was collected on the table and was not paid to the treasurer, because there were debts complained of to be settled immediately, and it was turned over to Brother Bouldin for the purpose of paying off the debts incurred in building the church. As a general thing this money that was collected on the table was turned over to Mr. Bouldin.

Q. Was there any memorandum made in the books at the time
37 of the amount of money paid in by the church?

A. Well, it was supposed by us to be entered, but I was not clerk. I do not know how it was entered, but I think it was, for we had a book of that kind.

Q. Did you not have a book, and always when money was paid by the church into the treasury, was it not put down in that book by the clerk, so as to keep a memorandum of it?

A. The church had a ledger in which we entered the amount of money collected in church meetings from time to time, and about the latter part of our trusteeship we had a small book that we made memorandums in. We entered in that book generally such amounts as we collected and knew of being collected by a church member.

Q. Do you recollect anything about the deed that was made from Bouldin to the church for this ground?

A. Yes, sir; I remember that there was a deed.

Q. Who was it executed before, Mr. Barnaclo?

38 A. I think it was, sir.

Q. Did you see it?

A. No, sir.

Q. Did you hear it read?

A. I do not remember of hearing the deed read, distinctly; I do not remember that. I remember about the time that I went down there to sign the notes and sign the deed, that I was a little late getting there, but I do not remember of hearing the deed read, and I do not know exactly what the contents were; I remember this, though, and have always understood that it was a certain portion of ground for the church property deeded to us.

Q. Was the deed of trust that you executed to Mr. Bouldin made at the same time that he made you the deed for the ground? You made a deed of trust to Mr. Bouldin to secure him in the payment of the purchase-money for the ground, did you not?

A. Yes, sir; I think there was.

Q. Was that not given at the same time that the deed was to you for the property?

A. About the same time.

39 Q. You recollect you signed the deed of trust to you, do you not?

A. Yes, sir.

* * * * * * * *

Q. How much did the building of that church, lumber, carpenters' work, masonry and brick, and all the work that is done on the church, cost?

A. Indeed, sir, it is impossible for me to tell, because at times, when this work was going on, Mr. Bouldin was the superintendent and manager of it, and he employed the laborers; all that I know, however, about the charges was when he would call for certain amounts of money he would say that he wanted so much to pay for this and so much for that, &c., time after time; but just exactly what one man charged, the carpenters, bricklayers, &c., I do not know.

Q. Well, at the time he made the demands of the church for so much money, did he always state what it was for?

A. Oh, yes; he generally made statements of what it was for.

Q. Was there not a memorandum kept in a book of all the
40 money that he drew out of the church for the payment of the expenses of the church, as well as its building?

A. I know the greater portion of it was, but whether the whole of it was I do not know; I never kept the book; I know it was supposed to be.

* * * * * * *

Q. Has the cost of building the church been paid?

A. Do you mean, has it all been paid?

Q. Yes, sir; lumber bills, brick bills, carpenters' work, &c.

A. I do not suppose it all has been paid; at all events, not by us, because we have given notes upon the deed. We had not finished paying it all up to the split.

Q. That is, you owe Mr. Bouldin, you mean?

A. Yes, sir.

Q. Did you keep an account of the money that you paid towards the cost of that church yourself?

A. The cost of building it?

Q. I am speaking now about the cost of building the brick church. Did you keep an account of the money that you paid into the
41 treasury yourself individually?

A. I do not understand you.

Q. I want to know if you paid anything yourself individually toward the building of that church.

A. I put in money time after time.

Q. Did you keep an account of the amount you put in?

A. No, sir.

Q. You do not know how much you did put in?

A. No, sir.

Q. Well, what you did put in, did it go towards paying for the cost of building the church, or any part, for paying the expenses, paying the sexton and other expenses about the church?

A. Well, I put in money for both purposes. I have put in a dollar at a time, sometimes fifty cents, sometimes I would put in what I was able to, and every month we put so much in as members of the church; sometimes in taking up collection I would put in ten cents, twenty and twenty-five cents; I cannot tell how much I put in.

42 Q. During the time those collections went on did you keep more money in the treasury to pay the ordinary expenses of the church?

A. Sometimes there was a great deal more, and sometimes after the money had been paid out there might not have been quite enough, but it was sometimes one way and sometimes another.

Q. As a general thing you paid off the expenses of the church by your contributions?

A. Yes, sir.

Q. Do you remember how much it was your custom to raise a month?

A. I do not remember exactly how much we raised a month.

* * * * * * *

Q. Was there ever any money paid to Mr. Bouldin on this church property?

A. Yes, sir.

Q. How much?

A. I do not know how much.

Q. Who paid it?
A. The congregation.
Q. Out of the treasury?
A. It did not get in the treasury to pay it out; we paid it right
43 off the table, some of it.
Q. Was there any receipts taken for it?
A. No, sir; not to my knowledge. Some of it there were receipts taken for.
Q. Mr. Bouldin's?
A. Yes, sir.
Q. Where are those receipts?
A. I do not know, sir.
Q. Who kept the receipts?
A. I do not know who kept the receipts.
Q. Was there any entry made of the amount paid to Mr. Bouldin on the church property in the book?
A. There were some entries made. I do not know whether they were all made or not.
Q. Do you know of a single amount of money paid to Mr. Bouldin on this church? Can you name any amount, and by whom it was paid?
A. I do not know exactly what amounts were paid to him at different times.
Q. Did you ever have a settlement with Mr. Bouldin? Did you, as trustees of the church—I do not mean the cost of the church, but the building material?
A. I do not know that there was a particular cost of materials.
44 There was a settlement with Mr. Bouldin about what the debt was on the church; that included all to my knowledge.
Q. When was that?
A. I do not know the date, but it was some time before the split.
Q. Where did that settlement take place?
A. Well, I was not present, and I do not know exactly at whose hous' it was—whether it was at Mr. Bouldin's house or not; but it was made.
Q. How do you know there was a settlement?
A. Because I heard so, and I saw the account. I had heard him say how much it was, and that the settlement that we——
Q. What account did you see?
A. The account of the settlement.
Q. What was it on? Was it on paper?
A. Yes, sir.
Q. What sort of paper?
A. It was on a sheet of paper.
Q. Was it in a book or on some pi'ce of paper?
A. On a piece of paper.
Q. Where is that paper?
A. I do not know.
45 Q. Have you not got it?
A. No, sir; I have not.
Q. Do you not know where it is?
A. It may be among the books; I do not know.
Q. Who had it when you saw it; that piece of paper I mean?
A. It was with the books.
Q. What books?
A. The books of the church.
Q. Who had the custody of the books then?
A. Who had the custody of the books?

Q. Yes, sir; who had the control of the books, the clerk or the treasurer?

A. The clerk had the control of the books.

Q. What was the name of the man that had possession of the books at the time you saw that account of the settlement?

A. James Lee was clerk of the church at the time.

Q. Had he the book when you saw the account of the settlement?

A. We had a settlement at the time of the split.

Q. Who had that paper when you saw it?

A. Mr. Bouldin had it when I saw it.

Q. When was it when Mr. Bouldin had it? You say Mr. Bouldin showed it to you?

46 A. Mr. Bouldin showed me an account of how much the church owed him. Whether it was on his house——

Q. Well, then, Mr. Lee did not have it in a book, as you said a little while ago?

A. There was a piece of paper on which an account of a settlement was drawn off. I think that is with the books, but I am not certain. I have not seen it for a long time. I do not know where it is.

Q. How much was it that he claimed then?

A. It was about twenty-four or twenty-five hundred dollars.

Q. Was that the cost of building the church, materials and all?

A. It was the debt of the church, and I suppose included all.

Q. Who made that settlement?

A. Well, I do not know but one of the gentlemen, and that was Mr. Chancey Leonard. I knew him, and the other Mr. Bouldin told me, and I heard the name called. I think it was Albert Post, and I do not know the other.

Q. Was Chancey Leonard one of the trustees?

A. No, sir; he was there at the settlement.

47 Q. Was there any notes given to Mr. Bouldin then for the cost of the church?

A. Yes, sir.

Q. How many?

A. Four $400 notes and six $100 notes.

Q Were they all given at the same time?

A. They were given after that settlement was made. It was not at that time, but it was at that settlement. That was the understanding.

Q. Were you present when the notes were given?

A. I was present when they were signed.

Q. All of them?

A. Yes, sir.

Q. Did you sign each one of them?

A. I think I did.

Q. The four $400 notes and the six $100 notes?

A. Yes, sir.

Q. All this took place before the split?

A. Yes, sir.

Q. Were any payments ever made on these notes?

A. Yes, sir; I think there was.

Q. You think so?

A. Yes, sir.

Q. Do you know it; and, if so, how do you know it?

48 A. Well, there was a payment made on one of the $100 notes. That was paid.

Q. Was the note taken up?

A. The note was paid, but it was not taken up and delivered into the hands of the trustees.

Q. Who paid it?

A. It was paid by the contribution of members.

Q. Do you know which one handed him the money?

A. I do not know which one handed it to him.

Q. Did he give a receipt for it at the time?

A. I do not know whether he did that or not, but I think it was credited on the note.

Q. Well, if the note was paid, why was it not taken up instead of being credited on the notes?

A. There is a difficulty to get your hands on a note.

Q. You must have had your hands on it to have given him credit for it?

A. We never had our hands on it.

Q. How do you know it was credited?

A. He said so.

Q. Which note was that?

A. One of the $100 notes.

Q. When was that paid?

49 A. Some time in 1864, '5, or '6. I do not know what year; I do not remember exactly.

Q. Did you see money paid to him?

A. I might have seen it; I do not know whether I did or not. I do not know whether I saw that money or not; I saw some of it.

Q. You do not know who paid it to him?

A. No, sir.

Q. Was there any more payments that you know of, made on the notes?

A. There was a part payment made on one of those other $100 notes.

Q. How much?

A. There was one that was paid to Mr. Chelsea.

Q. Did Mr. Chelsea own the note then, or did Mr. Bouldin?

A. It was one of the notes for the ground, and if I understand it right, Mr. Bouldin borrowed the money from Chelsea. He gave him the note for a hundred dollars.

Q. When that money was paid, how much was paid to Mr. Chelsea?

A. I think the balance due on that note; and if I remember

50 right, it was some $20 or $25.

Q. And it was paid to Mr. Chelsea?

A. Yes, sir.

Q. Did you know that Mr. Bouldin borrowed money on that note?

A. I did not know it, but he said that he had to borrow money sometimes to pay it up. Of course I did not see him do it.

Q. Well, at the time he said that he borrowed money on the note, did he in the same conversation say that he borrowed money to pay the expenses of the church?

A. Well, I suppose it was to pay the expenses of the church.

Q. Who attended to the getting in of the bricks and lumber? Who superintended the building of that church?

A. Mr. Bouldin.

Q. Were you ever present when he purchased any lumber and other things for the building of the church?

A. I was not present with him at any time, to my knowledge, when he was buying anything for the church.

Q. You do not know what the materials cost?

51 A. I do not know what the materials cost actually. I heard him speak of what bills he owed for such and such a thing, but what they cost I do not know.

Q. You cannot form a correct idea at all of the cost of the materials of every sort that went into that church?

A. No, sir; I cannot, just now.

Q. Does not a portion of the members who belonged to that church when you first went there still worship in it as the church?

Mr. WILSON. I object.

A. Yes, sir; I think they do.

Q. Do they not hold their regular meetings there as they always did when you were with them?

Mr. WILSON. I object.

A. I guess they do; those that worship there with him.

Q. Has Mr. Bouldin had any more the possession of that church than the balance of the congregation who worship there?

Mr. WILSON. I object.

52 A. I do not know what authority he takes in the church. I am not there to see it. I do not know what authority he takes at all.

* * * * * * *

Q. Are you the same Willis J. Minor who gave a deposition in this case before?

A. Yes, sir.

Mr. MOORE. I now propose, if the auditor please, to make that original deposition a part of this one. He says that he is the same Willis J. Minor who testified before. And then I will close his examination. It begins on page 147 and ends on page 149, in the Supreme Court record in this case.

The AUDITOR. Have you anything to say, Mr. Wilson?

Mr. WILSON. I have no objection. It is already in the case.

Adjourned to meet on Saturday evening, Jan'y 10, 1874, at 6 o'clock p. m.

53 Met pursuant to adjournment January 10, 1874, at 6 o'clock p. m.

WILLIS J. MINOR. Redirect examination by Mr. WILSON.

Q. In putting up this new church building—the one on the corner of 4th and L streets—who acted as manager?

A. Mr. Bouldin.

Q. Who attended to the business of paying the bills, &c.?

A. Mr. Bouldin.

Q. Did he act for the church in that, or not?

A. Yes, sir; he acted for the church.

Q. With whose money did he make the payments of these bills in the erection of the church?

A. Well, he used a portion of money that he gathered or could be gathered from contributions in the congregation. I heard him say very often that he had to expend some of his own money.

Q. Describe how money was raised, by whom it was collected, and whether it was the church money.

54 A. The money was collected from the members of the church and by public collection. We sometimes made the request for

members to come up and give as much as they could, and some would give five, ten, and so on.

Q. All these moneys that were collected as you have described, did they go to Mr. Bouldin, or did they not?

A. All the debts that were paid were paid through him and by him with the money that was collected.

Q. Did he or not ever make to the church regular accounts or reports showing the amounts that he had collected and received, that he had paid out, &c.? Did he ever make these reports regularly and in writing?

A. He used to report it verbally at times. Do you mean by making monthly reports?

Q. Or quarterly reports, or anything of that kind?

A. No, sir; I do not remember of any reports in that way. As to making regular reports, monthly or quarterly, as to what had been collected during such times, I do not remember of his doing so.

55 He used to very often say to the congregation, "I have spent so so much, and I had so much," and so on, but as to making regular reports I do not remember of his doing so.

Q. How was it that he had so much of the church money in his hands?

Mr. BARRETT. I object.

A. He was the sole agent for building the church, and of course all the money expended was through him, and he received it from whatever source it came.

Q. Were these moneys that were raised in the church, as you have described, or not, entered on the church books and paid into the church treasury, or did they go right to Mr. Bouldin? I speak now of the time that you were raising money to build the church and were paying for its building.

Mr. BARRETT. I object.

A. The moneys at times, a great portion of it, went into the treasury. Some was entered on the books; sometimes there was money collected on the table and received right from the table by Mr. Bouldin;

56 some he received outside, and made the report that he had such and such moneys.

Q. How did you and the trustees come to give Mr. Bouldin these four hundred-dollar notes that have been spoken of? What were they for, and how did you come to give them?

A. They were for the building, and to secure him in getting his money.

Q. What money?

A. The money that was due him on the building.

Q. How did you come to arrive at the amount of money that was due him on the building?

A. It was stated to us by him that we owed him so much.

Q. How much?

A. At the time the notes were given I think it was $2,400. I think that was the amount; I do not know exactly.

Q. Well, then, did you not give him the notes for that?

A. Yes, sir.

Q. How did you or he arrive at the amount?

57 A. He stated that he had had settlements and an estimate by some of the brothers and they claimed that amount. They came to the conclusion that they were so much in debt to him, and it was to the amount of $2,400, if I understood it right, and we gave him notes for that at his request.

Q. How many of those notes did you give, and what size were they?

A. To the best of my knowledge we gave him four $400 notes, and there were six $100; one of them was for $120, making in all $620.

Q. You said something about settlements. Do you mean when you speak about the settlements—when you arrived at the amount of money—do you mean the settlement that took place when the first counsel was called, and then the second, and then you went over to the 3d Baptist Church?

A. No, sir. I mean the settlement before there was any break, split, or confusion.

Q. Was this before the notes were given or afterwards?

A. The settlements were before the notes were given.

58 Q. The deed you got for the ground appears to be dated the first of April, 1864, acknowledged before Barnaclo. The notes you gave for the ground seem to be dated the 28th of July, 1862, more than two years or about two years before. Please explain how this came to be so.

A. How the notes were given before the deed?

Q. How the notes came to be given in July, 1862, and the deed was given the 1st of April, 1864, both being for the ground?

A. At the time the deed was first made out we gave him notes for that amount. The deed was made shortly after the purchase of the ground. About the time we commenced building, or shortly afterwards, we gave him these notes for the ground.

Q. Describe those notes.

A. He charged us $620 for the ground, and we gave him notes to that amount. There were five $100 notes and one of $120.

Q. How does it come that your deed was dated so long after the notes were dated?

A. The second deed—they gave a second deed—that was the cause of its being so much behind the notes.

59 Well, now just go on and explain what there is in regard to those two deeds—the difference in their dates.

A. When we bought the ground he gave us a deed. There was a deed made by Mr. Bouldin to the church, to the trustees, and we gave him notes upon it. After that, some length of time, when the trustees held that deed——

Q. Who?

A. Charles Alexander. About that time there was a minister here in the city by the name of Boler, and in his visiting around and talking with Charles Alexander he got a chance to look at this deed, and found out that there was something wrong about it.

Q. (By Mr. BARRETT.) Are you stating what you know or what you have heard?

A. What I have heard.

Mr. BARRETT. I object to former answer, and ask that the auditor have it stricken out.

The WITNESS. He said there was something wrong about the deed, and Mr. Bouldin was notified that such was the case and he was

60 requested to correct it, and he took the deed back to correct it. We did not receive or he did not give us the last deed until some time after that; he gave us another deed, to which we gave a deed of trust.

Q. Then the notes were given at the time you bought the ground, and when the first deed was made and that was set aside or something done with it and a second was made? That is your explanation of the differ

ence in the dates between the making of the notes and making of the deed?

Mr. BARRETT. I object on the ground that the question is leading.

A. Yes, sir; to the best of my knowledge.

Q. Do you know of your own personal knowledge that the first deed was made?

Mr. BARRETT. I object.

A. Yes, sir.

Q. Do you or not know of your own personal knowledge that the notes were given?

Mr. BARRETT. I object.

A. Yes, sir.

Q. Do you know of your own personal knowledge that the
61 notes were made at the time they purport to be—July, 1862?

Mr. BARRETT. I object.

A. Yes, sir.

Q. Was or was not that first deed of which you have spoken ever passed to the trustees and by them held, and do they now hold it as the deed from Mr. Bouldin for the ground?

Mr. BARRETT. I object.

A. It was passed to the trustees, but the trustees have not got it now, and have not had it since it was given back to him.

Q. In your cross-examination you have stated that a note was paid to Mr. Bouldin and not taken up; please state how it came that such a thing happened, and why the business was conducted in that kind of way.

A. The reason why is this: He held the notes, and whenever the money was paid to him on this account he had charge of the notes and received the money. We had confidence in him and trusted him in all our dealings, we believing it was all right until we found to the contrary.

62 Recross-examination by Mr. MOORE:

Q. At what time did you become a member of the church?

A. I joined the church in 1862.

Q. What time in 1862?

A. In about July or August; I do not remember exactly the month.

Q. Were you present when the first deed that you have been speaking of was made?

A. No, sir; I was not present when it was made.

Q. Did you ever see the first deed?

A. No, sir.

Q. You never saw it?

A. I saw the one that Charles Alexander had, but I was not present when it was made.

Q. You say you saw the one that Charles Alexander had?

A. Yes, sir.

Q. Do you know how he got it, of your own knowledge?

A. He got it from Mr. Bouldin.

Q. Did you see Mr. Bouldin give it to him?

A. No, sir.

63 Q. By whom was that first deed signed?

A. Signed by the trustees.

Q. Which ones?

A. It was signed by Joseph Alexander, Charles Alexander, and John Middleton I believe.

Q. Did they all sign it?
A. I believe they all did, to the best of my knowledge.
Q. Did you read that deed?
A. No, sir.
Q. Did you see it opened?
A. I saw it opened; yes, sir.
Q. You did not read it?
A. No, sir; I could not read well enough then.
Q. You do not know what was in it?
A. I do not know really the contents, only what I was told was in it.
Q. You say that Mr. Bouldin received money that was taken up in the congregation, and that was obtained by him outside by contribution?
A. Yes, sir.
Q. How do you know that he raised any by contributions outside of the church?
64 A. Because he said so, and I saw him bring the money in the church, and he had a book to that effect.
Q. Was it put down in the book at the time?
A. I do not know that it all was.
Q. Do you know that it all was not?
A. I do not believe that it all was. I know that all was not, for certain reasons.
Q. Who kept the book?
A. Sometimes Mr. Lee kept the book and at other times Mr. Bouldin had it.
Q. Well, whenever Mr. Bouldin told you that he had collected money outside of the church, did he not read it to you from his book?
A. No, sir; not always.
Q. From whom did he get money outside of the church, and did not report it to you?
Mr. WILSON. I object. He has not said at all that he collected money and did not report it to the church; and it is assuming a state of facts to be proved that have not been proved.
65 By Mr. MOORE:
Q. When he made a report of money received outside of the church by contributions, did anybody take it down in a book or memorandum in writing?
A. All of was not taken down at all times.
Q. Was any of it?
A. Yes, sir.
Mr. WILSON. I object to these questions because they have been asked before and answered.
Q. Now, I will ask you if you know of any money which he collected outside of the church that was not put down in the book?
A. Yes, sir.
Q. Tell what it was and from whom he collected money and did not put it down in the book.
A. I do not know who he got it from, whether he got it from a white man or a black one.
Q. What amount and when did he so get money outside of the church and did not put it down in the book?
66 A. I have not the exact amount in my mind, nor have I the date.

Q. You can answer this question: How much money did you pay towards building that church and paying for the ground?

Mr. WILSON. I object to that question, on the ground that it has been once asked and answered.

A. I do not know, sir.

Q. Well, did you pay any money to that church that was not put down in the book?

A. I guess I did; I think I did. I put in money time after time and I do not believe it was put down. If it was it was not put down in my name.

Q. How much do you think you paid? Did you keep a book yourself?

A. Of what money I paid?

Q. Of what money was paid into the church.

A. After some time I had a book for my memorandums, but I did not put down all the money, for it was some time after money
67 had been collected before I got it.

Q. Did you go to Philadelphia on a begging expedition for this church?

Mr. WILSON. I object.

A. Yes, sir.

Q. By whose authority did you go there?

A. By Mr. Bouldin's, and that of the church.

Q. How much did you collect that time in Philadelphia?

A. I did not get over nine or ten dollars. Mr. Bouldin had been on before me.

Q. How much did he get from there?

A. I do not know; he said $500.

Q. Did you put that down in the book?

A. I think a memorandum was made of that.

Q. You say you kept a book yourself?

Mr. WILSON. I object to these questions because they were not drawn out on the redirect examination, and the majority of them were asked on the cross-examination and answered.

A. Yes, sir; I kept a book.

Q. Well, when did you begin to keep your book?

68 A. I do not remember exactly the date.

Q. Did anybody else keep one besides you?

A. Yes, sir.

Q. Who?

A. Sometimes all the rest of the trustees had a book.

Q. How long did you remain trustee?

Mr. WILSON. I object for the reason that the record will show.

A. I do not know.

Q. Were you not turned out once, Mr. Minor, of the church as trustee?

A. Not to my knowledge, except when Mr. Bouldin excluded the whole church.

Q. Were you a trustee when he excluded the whole church?

Mr. WILSON. I object.

By Mr. MOORE:

Q. Was there not some difficulty with you about some money that you failed to account for?

A. Not to my knowledge.

Q. I will ask you straight out if there was not the amount of

69 $18, which you got hold of and failed to return and account for to the church, and whether they did not turn you out for that?

Mr. WILSON. I object to the question, because it was asked and answered before.

A. No, sir.

Q. Where were you when you signed these notes that you have described?

A. At Barnaclo's office.

Q. Did you sign the deed, or the second deed, that you have described here to Mr. Wilson in your testimony?

A. Yes, sir.

Q. Was it read over to you at the time you signed it?

A. No, sir.

Q. You tell this auditor now that Mr. Barnaclo did not read that deed over and explain it all to you?

A. He might have explained it to the rest. I did not get there as early as the rest. Some of them had signed it when I got there.

Q. He read it over to you?

A. I do not remember of hearing it read at all.

Q. Did he write all the notes; the four $400 notes?

70 A. I do not know who wrote them. I signed them.

Q. When I examined you before, did you not state, on your oath, that there were but six $100 notes, and how came you to put in a $120 note?

A. I stated then, if you did not understand me, that there were six $100 notes, and one bearing $120.

Q. Has not somebody told you since you were examined before?

A. No, sir.

Q. Have you had no conversation with anybody about the testimony you gave on your cross-examination?

A. Have I had a conversation with somebody about the testimony I gave before?

Q. About the answers you gave to my cross-examination before?

A. Yes, sir; I have talked about it.

Q. With whom?

A. To my wife.

Q. Is she the only one?

A. No, sir; I talked with my brother.

Q. Is he all?

A. That is a question I do not feel disposed to answer.

71 The AUDITOR. You must answer the question.

The WITNESS. Well, I will answer it. I have talked with no one who had any particular interest with it at all; no more than my family.

Q. Who else, now, besides your wife?

A. I talked with my family only about it, and folks in my house.

Q. Who do you mean by folks, your family and folks?

A. I call my family folks.

Q. Have you or not talked with Mr. Wilson, your lawyer, about the testimony you gave here on the other examination when I cross-examined you; have you or not?

A. No, sir; I have not talked with him about it, if that is what you want to find out.

Q. When was the second deed made?

Mr. WILSON. I object. The deed is in evidence, and will show for itself.

A. I do not remember exactly the date it was made.
Q. Do you know when the first deed was made that you saw in the hands of Charles Alexander—when it was dated?
72 A. I do not know when that was dated.
Q. Now, were these notes that you speak of and the first deed made at the same time?
A. I believe they were.
Q. When were the notes given?
A. The notes were given some time in 1862, I think.
Q. Do you recollect what time?
A. I do not remember exactly what time it was.
Q. When did you see the notes?
A. I do not know that I have seen them altogether. I have seen Mr. Bouldin have them. I have seen them in his hands several times.
Q. How many of them did you see in his hands?
A. I do not know exactly; one or two; may be more.

WILLIS J. MINER.

Sworn to and subscribed before me this 10th day of January, 1874.

R. LEECH.
Auditor.

73 JULY 1, 1873.

JOSEPH ALEXANDER, a lawful witness, being duly sworn, deposes and says:

Examined by Mr. WILSON:

Q. Are you the same man who was examined under this name in this cause before Mr. Clephane?
A. Yes, sir.
Q. How long have you been a member of the 3d Baptist Church?
A. Since 1861 or '2; such a matter more or less.
Q. Are you the man that was described in the deed from Mr. Bouldin to the trustees of the 3d Baptist Church?
A. Yes, sir.
Q. As one of the trustees?
A. Yes, sir.

* * * * * * *

Q. Who had the control or management—general management of purchase of the lot and the building of the church?
A. Pretty much Mr. Bouldin had.
Q. Did the church, or you on behalf of the church, ever have any settlements with him?
A. Yes, sir.
74 Q. Did you ever give him any notes?
A. Yes, sir.
Q. Were the notes given at the settlement, or about that time?
A. I cannot exactly say whether it was at that time or not.
Q. Were they given to him upon the settlement?
A. Yes, sir.
Q. How many notes were given?
A. I know there was one; I am clear of that; but I think there were two given.
Q. You do not know how many notes were given?
A. No, sir.
Q. How many notes did you, as trustee of this church, give to Bouldin upon that settlement?

A. I think there was six notes of $100 each, but I cannot exactly say, and four $400 notes I think. There were six $100 notes and four $400.

Q. What were the six $100 notes that you are speaking given for? Were they given for the house or the ground, or other debts?

A. They were given for the ground.

Q. What were the $400 notes of which you speak given for?

75 A. For the building.

Q. That is, you mean they were given to Mr. Bouldin by the church for the debt which was then due from the church to Mr. Bouldin, upon the settlement made between the church and him, and in payment for the debts that had been made in the building or erection of the church?

A. These notes were given for that.

Q. Did you ever make or know of there being made payment upon those notes?

A. Yes, sir.

Q. Well, tell what you may know with regard to them.

A. I know there was one of the notes paid. My mind strikes me very forcibly that there were two paid.

Q. What became of them after they were paid?

A. Mr. Bouldin held them.

Q. Well, do you know of any other payments that were made to him, either by moneys that he collected or by moneys that were collected otherwise and paid to him?

A. Yes, sir; there were moneys paid, of course.

76 Q. There were other moneys paid?

A. Yes, sir.

Q. Do you know whether they were agreed upon and fixed with the notes or not?

A. I cannot say whether they were or not.

Q. Did you ever hear him say along about the time of the split, in June of 1867, how much the church owed him?

A. Yes, sir. I heard him say frequently in the pulpit and at the deacon board that the church owed him $2,400.

Q. What time was this?

A. That he was stating all of this?

Q. Yes.

A. That was before the fuss was.

Q. How long? I mean was it a week, or month, or two or three months?

A. Oh, yes, sir; over two or three months. He stated it often before the congregation.

Q. Well, can you give any idea as to the time when he did it—how long before?

A. I do not like to say anything wrong. I cannot say exactly. My remembrance is not sufficient to say how long before, but it was

77 long before the split was that he made these statements.

Q. How short a time was it before the split took place?

A. How short a time?

Q. Yes, how short a time. I want to know whether it was a month, three, four, or six months.

A. I heard him say it six or seven times, and he also made the statement before the congregation a good many times.

Q. How much did he say the church owed him?

A. $2,400.

* * * * * * *

JANUARY 6, 1874.

Cross-examination of JOSEPH ALEXANDER by Mr. J. W. MOORE:

Q. Are you one of the parties to this suit between you and others, and Bouldin and others?

A. Yes, sir, I am.

Q. Can you read writing and write?

A. I can read and write some, sir; I have learned to read and write some little in late years.

* * * * * * *

78 JANUARY 7, 1874.

Cross examination of JOSEPH ALEXANDER continued by Mr. MOORE:

Q. How many notes did you give Mr. Bouldin for that ground?

Mr. WILSON. I object to the question, and ask that the auditor require the defendants to produce the notes; they have them.

The AUDITOR. I have nothing to do with making them produce the notes. You must make the proper demand of the opposite parties. I cannot do it. I am here to take such testimony as is offered. You know what the proper course is. State your question, Judge Moore.

Mr. MOORE. I asked him to state how many notes they gave to Mr. Bouldin.

The WITNESS. To the best of my knowledge, when I signed those notes at Mr. Barnaclo's, I think there were five or six. I do not know exactly, but I think there were four or five that I signed at that time for the ground.

Q. To whom were those notes made payable?

79 A. To Mr. Bouldin.

Q. They were made payable to Mr. Bouldin?

A. Yes, sir; and signed to secure him.

Q. How were they signed, by yourself as trustee—how many of you as trustees?

Mr. WILSON. I object for the reason that the notes will show for themselves, and they are in the possession of the defendants.

A. Yes, sir; I was one that signed. Willis Minor, John Middleton, Henry Watson, Charles Alexander (he is dead); we were trustees.

Q. When were those notes made payable? How long had they to run from they were given?

Mr. WILSON. I object.

A. There was no statement made to us of how long they were to run before they were made payable—not to my knowledge.

Q. Have those notes or any part of them been paid to Mr. Bouldin?

A. To the best of my knowledge there was.

Q. To whom was the payments made?

A. To Mr. Bouldin.

Q. Who made the payments to him—who paid it to him?

80 A. I cannot bring to my mind who paid the money to Mr. Bouldin at that time. We took up one of those notes, two I think. I cannot exactly say who took those notes up.

Q. You say there were one or two notes taken up?

A. Yes, sir.

Q. Where are those notes that were taken up?

A. When the money was paid on those notes I *we* tried to get them from Mr. Bouldin but he would not give them up; he held them.

Q. Did you take any receipt for the money when you paid it?

A. Whoever made that payment to Mr. Bouldin must have got one.

Q. Do you know anything of it?

A. No, sir.

Q. Now, when was the first payment made to Mr. Bouldin upon the ground?

A. Well, sir, those things are out of my mind; everything of that kind has been obliterated in such a way that I cannot tell.

Q. Was any money paid to Mr. Bouldin a year after the notes were given?

A. Paid to him in a year after the notes were given?

81 Q. Yes, sir.

A. I must tell you truly. There was money paid to him all the way through; for all the money that was taken up went principally into his hands to pay the debts.

Q. Have you any receipts, or do you know of any of the trustees who have any receipts, from Mr. Bouldin for the payment of any money on those notes?

A. If they have I do not know.

Q. Have you any?

A. No, sir; I have none at all.

Q. This congregation that separated from the old 3d Baptist Church, and where you now worship, as a member, have they another house that they worship in?

Mr. WILSON. I object.

A. Yes, sir.

Q. Please to state when you removed to the place where you now worship, and what you are called, what you call your denomination.

Mr. WILSON. I object.

82 A. When we left 9th street we moved on Franklin street and settled there; the month and day I cannot tell, but we have been there five years; that is, on Franklin street between 4th and 5th, and we are called the 3d Baptist Church. We have made a shelter to keep our people from going about the city. We have built a place to put them in.

Q. What kind of church have you now?

Mr. WILSON. I object.

A. We have a frame house.

Q. And you worship there as the 3d Baptist Church?

A. Yes, sir; the same 3d Baptist Church is together yet.

Q. Are the same persons trustees that were trustees in the old church?

Mr. WILSON. I object.

A. The same persons except Charles Alexander. He is dead and gone home to rest.

Q. Do you know how much the building of the old church cost?

A. Where we were first, the little frame you mean?

Q. I do not mean the frame; I mean the church where you were, the 3d Baptist Church.

83 A. Mr. Bouldin told the congregation that it cost $15,000, or sixteen, I do not know which; but I heard him state in the court-house when the judge asked him what it cost, he said about eleven or $12,000. He goes back on some thousand; but he had the congregation paying him 15 or $16,000; that is true.

Q. Well, now, you say that he said it cost so much. What do you say it cost? Without taking Mr. Bouldin's statement for it, I want to know what you know about it.

A. I don't know anything with regard to church property, how it sells, or anything about it; therefore, I cannot give you a statement about that.

Q. Then you do not know what it cost?

A. No, sir; only what he says. We went on to pay what he said, and always thought it was right.

Q. Did you pay him $15,000 for the cost of building that church?

A. We do not know whether the $15,000 were paid or not, but we went on to pay. How much of it is paid we cannot tell. There is
84 no doubt but what it was paid, but it was not paid in the name of the church, and that is why this thing is turned around. The money was gathered, but whether everything is paid I cannot give you any statement of that.

Q. Well, you paid him, then, what he asked, what he said it cost to build it?

A. We went on to pay it.

Q. How much of it did you pay?

A. I cannot tell how much of it we did pay. If we had had the privilege of having the money to pay as the trustees, we could give you a statement now of what we did pay, but we did not have that privilege. We wanted that privilege, but we could not get it.

Q. Who was the treasurer of the old church?

A. I was the first treasurer.

Q. When the church paid money into the treasury did they not pay it to you?

A. Yes, sir; I received it while I was treasurer.

Q. How much money did you receive from the church while you were treasurer?

A. I cannot tell; but when the bills come to him to be paid then the money was paid to Mr. Bouldin.

Q. Did you keep a book on which to enter the amount of money you received & collected?

85 A. I only kept an account of that that was taken up on the table; say 20, 30, or 40 cents. I would scratch that down in the book from one church meeting to the other. Then it would be entered on the ledger with the rest of the money that was taken up.

Q. Was it not all entered on the ledger?

A. Not that I know of.

Q. Did you pay money to Mr. Bouldin as treasurer without taking any receipt, and without entering it on the book?

A. We could not get a receipt.

Q. Did you enter it on the book?

A. I have no doubt but what I did.

Q. Do you remember how much money you paid to Mr. Bouldin at any time or times?

A. I cannot recollect. I recollect paying him several times money, but I do' remember the amount. (I understand how you are asking me questions.). When an amount of money was paid in—I do not know anything about figures—I have no doubt but that the clerk would put down the money that was taken out.

86 Q. You told your clerk when you collected money how much you had?

A. The clerk would always be there. I was treasurer a while.

Q. Well, now, what fund paid the expenses of the church? Was there not a sexton and other expenses, keeping the church in order, and so on?

A. Yes, sir.

Q. Was any of this money which you paid Mr. Bouldin applied to that purpose, or did it go upon the cost of building the church?

A. It was taken out of the funds of the church. There was no special collection taken up to pay the sexton and like of that; there was no particular collection taken up, but it was paid out of the treasury. I would like to say right here that part of the time Mr. Bouldin was treasurer, and part of the time his wife, and then Julious Bouldin was treasurer.

Q. Do you know where the lumber was gotten from that this house was built of—the materials and brick—from whom they were purchased?

87 A. I cannot exactly say; but it was left in charge of Mr. Bouldin to get these things principally, and he gathered up a right smart of old bricks in the first place. Where he got them from I could not exactly say.

Q. Did you, as trustee of the church, have a settlement with Mr. Bouldin about the cost of building that house?

A. I can recollect one. There might have been two, but I recollect one.

Q. Settlements?

A. Only saying how much we owed him and how much we had paid. I recollect at his house at one time some of the brothers went to his house to look over things and see how he was getting along, and see how much we owed him.

Q. Did you have a settlement with him then about how much you did owe him?

A. Yes, sir.

Q. Who made the settlement? Give the names of those who made it.

A. Chancy Leonard was one of them.

Q. Who is he? Is he a minister?

A. Yes, sir.

Q. Were you there?

A. Yes. sir.

Q. Who else?

88 A. There was two more brothers and ministers. There were two more besides myself and Chancy Leonard. We were there to have a kind of settlement of how much we owed him.

Q. Was there any writing made that night or any the day after that settlement was made?

A. I do not know whether any one took a sketch of it when we were there or not, but I drew up things as well as I could, and I gave them a statement of all that was done.

Q. How much did you owe him at that settlment?

A. He said that we owed him then $2,000, and some large amount; I do not know what the other amount was, but $2,000, that was the largest portion.

Q. Did you give him any notes on what you owed him?

A. It was for all the moneys we had a settlement on.

Q. Did you give Mr. Bouldin any notes for the balance due him?

A. No, sir; there was nothing given to him at all.

89 Q. You say there were no notes given to Mr. Bouldin at that settlement?

A. No, sir; he held all the notes, and when there was anything paid, he just held the notes and everything else, and we had no word to say about it.

Q. How many of these men were there at this settlement, the trustees, I mean?

A. There was some other brothers there belonging to the church, but I do not know whether there were any trustees there or not except myself. I cannot say exactly whether any of the trustees were there or not.

Q. When did this church split as you call it?

A. I cannot tell you exactly; it has been six or seven years ago, I believe.

* * * * * * *

Q. Did you ever hear Mr. Bouldin say anything about how much the church owed him?

A. I heard him say at the time of the settlement they owed him two thousand some hundred dollars.

90 Q. Is that all the conversation you heard him have about what you owed him?

A. He would go on and say that we owed him $2,500, and then we would make up that money, some of it, and give it to him. Then he would state the next time in the pulpit that we owed him $2,600.

Q. Did you ever hear him make any more statements than those you have just given in the church of what you owed him?

A. He would not come back and say we owed any more thousands of dollars, but he would say that we owed him two thousand and some large amount of dollars, and then we would pay it. Then he would come back and say we owed him two thousand and some more.

Q. He kept getting higher and higher as you paid him?

A. Yes, sir.

Q. That is all the settlement?

A. The last settlement that was made was at his house. It

91 was some two thousand and a large amount of dollars.

Q. Did you ever give your deposition in this case before?

A. Yes, sir.

Q. Were you present when the deed was made at Mr. Barnaclo's office?

A. No, sir.

Q. You were not there?

A. No, sir.

Q. You did not hear that deed read?

A. No, sir.

Redirect examination by Mr. WILSON:

Q. When was it that Mr. Bouldin said the church owed him $2,000? Was it before the split; and, if so, how long before it?

A. It was before the split.

Q. How long?

A. I cannot exactly tell how long it was before the split, but it was some time.

Q. Did you ever hear him say that more than once; and, if so, how many times?

A. I heard him say that five or six times that we owed him two

92 thousand, and I think it was four or five hundred dollars.

Q. Where was he when he said that, and who did he say it to?

A. He said it before the whole congregation up in the pulpit very often.

Q. Did you give the notes that have been described as being signed at Mr. Barnaclo's; did you help to sign them?

A. Yes, sir.

Q. Where were they signed?

A. At Mr. Barnaclo's.

Q. What were they given and signed for?

A. All that I can say is that I signed to secure Mr. Bouldin.

Q. For what?

A. For the ground.

Q. No; I mean the four hundred dollar notes that were said to be signed at Mr. Barnaclo's.

A. Yes, sir.

Q. What were they for?

A. They were to secure him for the ground we bought from him.

Q. What were the one hundred dollar notes for?

93 A I cannot track that out the way you ask it.

Q. What were the one hundred dollar notes given to Mr. Bouldin for? There were six one hundred dollar notes that have been described; what were they given for? Were they given for the ground, or the building, or what?

Mr. MOORE. To the latter part of the question I object, because it indicates the answer which the witness is desired to give.

A. I cannot say anything but that they were given to him to secure him for what we bought from him, or, rather, what we owed him, let it be what it may. They were given to him for that, let it be for the ground or the building. They were given to secure him what we owed him.

JOSEPH ALEXANDER.

Sworn to and subscribed before me this 7th day of January, 1874.

R. LEECH, *Auditor.*

94 JULY 1, 1873.

JOHN MIDDLETON, a witness of lawful age, being duly sworn, deposes and says:

Examined by Mr. WILSON:

Q. Mr. Middleton, were you one of the trustees of the 3d Baptist Church?

A. Yes, sir.

Q. Were you one of the men who bought the church lot of Mr. Bouldin?

A. I did not buy it at that time; I was not trustee at the time the lot was bought.

* * * * * * *

Q. Did you ever hear Mr. Bouldin say how much the church owed him along about the time of the split?

A. Yes, sir; I heard him say before the time of the split and after the split.

Q. How much did he say you owed him?

A. I cannot say exactly what the amount was. If I am not mis-

95 taken Mr. Bouldin said we owed him—I won't be sure, but I think it was—$1,200. I heard him say that several times.

Q. Who occupies the church building now?

A. Mr. Bouldin.
Q. Who has occupied it since the time of this division?
A. All the time Mr. Bouldin occupied it most.
Q. Where have the complainants' worshipped?
A. They have been worshipping upon Franklin street, between 4th and 5th and P and Q.
Q. Since this suit was commenced in September of 1867, have the complainants worshipped as a body in the church building on 4th and L streets?
A. Worshipped on the corner of 4th and L streets? No, sir; they have not worshipped there since but for a little while since Mr. Bouldin took possession of it.

96 JANUARY 10, 1874.

JOHN MIDDLETON, a witness on behalf of the complainants, being cross-examined, deposes as follows:

By Mr. MOORE:

Q. Are you one of the parties to this suit?
A. I am one of them the suit rises against.
* * * * * * *
Q. Do you know how much money was paid to Mr. Bouldin on account of the ground and the church put together?
A. No, sir; I do not know of my own knowledge. All I know is what he told me a few days before the fuss commenced. He told me that we did not owe a great deal on the ground, and we were getting along very well, and what we had done he gave us credit for, and also that we did not owe him $400. He told me that; I know we paid him a great deal of money.
97 Q. He said you had pretty well paid up for the ground?
A. No, sir, for the church; that we had paid up for the church, and that we did not owe a great deal; that we need not be uneasy, and I took it for granted that it was so, and I never went any further to examine him.
Q. Did you ever keep any account of the money that was paid in and out of the church?
A. No, sir.
Q. You were treasurer, were you not?
A. Yes, sir.
Q. In what year?
A. I cannot tell you the year.
Q. And whenever any money was paid into the church it came into your hands as treasurer?
A. Yes, sir; whenever Brother Bouldin wanted it for any particular use the church would give it to him, and many times the money was not taken up, but was just turned over to him, and we took it for granted that everything was all right. We have our ideas now, though. We have not got that way of doing things now.
98 Q. You cannot tell how much money was paid in to you or how much was paid out to Mr. Bouldin. Did you pay anything to him individually?
A. I took it for the church.
Q. Did you take a receipt from him?
A. Yes, sir; when I was treasurer.
Q. What did you do with the receipt you took from him?

A. I turned it over to the church.

Q. Did you turn the money over to the church that you got; all the money that was paid to you as treasurer of the church?

A. I turned it over to the church by their order. I call it paying over to the church. I paid it to whom they told me, and when I left, the receipts were given to the church.

Q. Do you know what has become of them; have you seen them since?

A. No, sir; I have not seen them since.

Q. Now, when you were treasurer, was there not some difficulty with you and the church about $18?

A. Yes, sir.

Q. Who got that $18?

99 A. I cannot tell who got the $18. The Sunday that the church was dedicated, the money got misplaced some way, I cannot tell you how. Mr. Bouldin kept an account for me. I cannot write well, and, somehow, he missed keeping the account that month, and they charged me with having more money than I had. I cannot tell where that money went to.

Q. Did anybody ever pay it back?

A. Yes, sir; they concluded to pay it back to me. I made a complaint about it, and they concluded to pay it back to me.

Q. Did you charge some brother member of the church at that time with taking the money?

A. No, sir; I did not do that, because I could not do it. I did not know who had it. It was charged on me, and I did not know who had it, and I was not going to charge it on any one.

Mr. WILSON. I object to the questions about the $18.

100 Q. Do you know anything about the settlement made with Mr. Bouldin?

A. Well, I cannot say that I know, but I have heard of it. I was not present.

Q. Do you know how much the church owes Mr. Bouldin?

The WITNESS. Now?

Q. Yes, sir.

A. No, sir; I do not.

Q. Do you know anything about the bills that were paid for the building of the church, for the brick and lumber of all sorts?

A. I was not there at that time, and I do not know anything about it, because when I got there all that was decided by the members.

* * * * * * *

Adjourned to meet on Tuesday evening, January 13, 1874, at 6 p. m.

The foregoing testimony having been read over to the witness, he desires to explain that portion thereof wherein he is made to say that Mr. Bouldin told him the church owed him only $400 for the whole church property.

101 The WITNESS. Mr. Bouldin told me the night before we broke up that we owed him but $400 on the ground, and we need not be uneasy about the church, that we were getting along first rate.

his
JOHN + MIDDLETON.
mark.

Sworn to and subscribed before me this 2d day of February, 1874.

R. LEECH, *Auditor.*

Mr. Wilson here offers in evidence certified copies of three deeds from the land records of Washington County, District of Columbia, which were filed, subject to exception.

Adjourned to meet on Monday, February 16, 1874, at 6 o'clock in the evening. Parties notified.

JULY 1, 1873.

HENRY WATSON, a witness of lawful age, being duly sworn, deposes and says:

Examined by Mr. WILSON:

102 Q. Were you ever treasurer of the 3d Baptist Church or have anything to do with keeping books?

A. No, sir; I was not the treasurer, but one of the trustees.

Q. Did you keep account of moneys received or paid out, or delivered over, or collected by the trustees?

A. Yes, sir; from the time I was elected a *a* trustee, I kept an account right straight through.

Q. What account did you keep?

A. I kept all the money that was collected by the church.

Q. Did you have it in any of the books?

A. Yes, sir.

Q. Have you any of the books that you kept your accounts in?

A. Yes, sir; this book's like it.

(Mr. Wilson here offers to the witness one of the books filed in this cause under a rule of court, and marked "J. H. L., No. 8," and asks the witness to examine the same and state what it contains.)

The WITNESS. The book contains all the finances collected by the church at the time I was trustee.

103 Q. By whom was it kept?

A. It was kept by me, sir.

Q. Kept by you?

A. Yes, sir.

Q. Is it, or any portion of it, in your handwriting?

A. The most of it is in my handwriting. Maybe some few lines there is different from mine, but it was kept pretty much by my handwriting.

Q. Look at that book and see if you have there, or can find there, any report of the amount due Mr. Bouldin.

A. Yes, sir; I do.

Q. Just repeat what it is.

A. It says, $2,494.80.

(This will be found stated on the first page in this book marked with my initials.)

Q. On what is that due?

A. That is balance due.

Q. On the house and land, or the ground alone?

A. That constitutes the whole bill.

Q. Were there any notes given for that, that you know of?

A. Do you mean for the ground?

104 Q. Any one of them.

A. Yes, sir; there were two notes taken up on the ground.

Q. No; the notes given, I am speaking of; not those that were taken up.

A. I was not a trustee when the notes were given

Q. Do you know how many notes were given?

A. Yes, sir.
Q. How many?
A. There were six $100 notes which bore $100 each, and one $120 note which bore $120.
Q. Do you mean that there were six $100 notes, or five $100 notes bearing $100 each, making a total of $620?
A. Yes, sir; that is it.
Q. Now, those notes were given for the ground. How many notes were given for the house, as due Mr. Bouldin on the house?
A. There were four $400 notes.
Q. Four $400 notes?
A. Yes, sir.
Q. Have you any record of how much was paid to him on account of those notes?
105 A. Yes, sir.
Q. Well, run along through there and find out how much there was. This book *book* has been taken away from you for several years?
A. Yes, sir; since 1867.
The witness reads from the book:
"August 3, 1866. Paid to the same, of one of the notes on the ground, $76.77."
Mr. WILSON. There is another one, now read that.
The WITNESS. "October 7, 1866. On one of the $100 notes, $25.20."
Q. (By Mr. WILSON.) Now, what is that one?
A. October 7, 1866.
The AUDITOR. I would suggest, Mr. Wilson, that you call the attention of the witness to the date and page of the item.
Mr. WILSON. The difficulty is, that it is not paged.
Mr. CARRINGTON. I wish to know of the witness if this is his handwriting?
The WITNESS. Yes, sir; it is.
Q. (By Mr. CARRINGTON.) At the time you wrote this, how were you acting?
106 A. As a trustee.
Q. Were you a clerk?
A. Yes, sir.
Q. Who reported to you the payments as they were made?
A. I was at all the meetings.
Q. Did I understand you to say that the whole of this is in your handwriting?
A. Yes, sir.
Q. And at the time that this was written down you were acting as trustee of the church, and you were charged with the duty of keeping this book?
A. Yes, sir.
Q. You made these entries from information given you by different ones?
A. We always have a trustee meeting once a month, and all things that is done in the church come before the trustee board?
Q. Who told you that these payments had been made?
A. I was one of the trustees and I knew of it.
Q. How did you know of it?
A. I knew that money was collected.
Q. How did you know that money was collected?
107 A. The money was paid over to Brother Bouldin. The payments made to Bouldin on account of these notes are to be found

set forth in this book on the pages and at the places where I have marked in pencil my initials—H. W.—in the presence of the auditor. They are on pages marked 2, 3, 4, and 5. The writing on the last page in the book is in my handwriting, and was the last writing I did.

Q. (By Mr. WILSON.) Look at the pages written on in the back part of the book, marked at the top in pencil A, B, C, and say in whose handwriting that is?

A. Those three pages are not in my handwriting, but all the rest are mine.

Q. Do you know whose handwriting they are in?

A. Yes, sir.

Q. Whose are they?

A. That is Brother Bouldin's, and that is Brother Bouldin's [indicating.] That is the only kind of writing that he has got in this book. Those three pages are in the handwriting of Brother Bouldin, and also that on the page marked D.

108 Q. Did you ever hear Mr. Bouldin, at or about the time this split occurred, say or state in the presence of the trustees or the congregation how much the church was indebted to him then?

A. At the time the split was he said it was $2,400, or a little before the split he said it was $2,400.

Q. When was it that you wrote in that book there on page 1, marked with your initials?

A. I most generally date it.

Q. Do you know when that was?

A. No, sir; I do not know when it was.

Adjourned until Tuesday, July 8th, 1873, at 11 o'clock.

109 TUESDAY, *July* 8, 1873—11 o'clock a. m.

Defendant failing to appear, hearing adjourned until further notice, to be given by the auditor, as per stipulation of counsel filed.

JANUARY 7, 1874.

HENRY WATSON, a witness on behalf of the complainants, being cross-examined by Mr. J. W. Moore, solicitor for defendants, deposes as follows:

Question. What is your age?

Answer. I am 33 years old this April coming.

Q. When were you elected trustee of the 3d Baptist Church?

Mr. WILSON. I object, on the ground that the record will show.

A. I do not remember exactly; but I think it was in 1855.

(Upon suggestion of counsel for the complainants, the witness then said 1865.)

Q. How old were you when you were elected trustee of the church?

110 A. I do not know; I did not keep an account of my age; I know my age very well, for I have it home in the Bible.

Q. How long had you been a member of the 3d Baptist Church before you were elected a trustee?

A. I joined the 3d Baptist Church in 1862. I think it was in the fall. I was elected a trustee in 1875. I think it was.

Q. How long did you act as trustee of that church?

A. Well, I acted as trustee until the trouble commenced—in fact, I am a trustee now; they never removed me.

Q. During the time you were trustee were you ever elected treasurer of the church?

A. No, sir.

Q. Who was clerk there when you were first elected trustee?

A. Brother James H. Lee, if my memory serves me right.

Q. Did the clerk keep an account of the moneys paid in and out of the treasury in his book?

A. Yes, sir, I think he did; he kept an account of all the mo-
111 neys paid out and collected in; that was his business, and I think he attended to it.

Q. Did anybody else keep an account of the moneys besides the clerk that was collected in or paid out?

A. Paid into the treasury?

Q. Yes, sir.

A. Yes, sir; I kept an account at the time I was elected. Before I was elected I kept no account of them.

Q. Did anybody else besides you keep an account of what was collected?

A. Yes, sir; many of the trustees kept an account.

Q. Which ones; just tell us the names, if you please?

A. Willis Minor, John Wiggins—he could not keep it, for he was not in Washington all the time, and of course he could not keep any; Brother Wiggins kept a book, but he was not in Washington all the time, and of course he could not keep an account.

Q. Who else besides you, Minor, Wiggins, and the clerk—who else kept an account?

112 A. There was Brother Alexander; I believe he kept one.

Q. Which one of the Alexanders?

A. Joseph Alexander.

Q. Did each one of you keep a book?

A. Yes, sir.

Mr. WILSON. I desire an objection entered to all this cross-examination, for the reason that the books and records on file in the case will show for themselves.

Q. Where is the book that you kept?

A. Well, at the time the trouble commenced I turned it over to the court, and I have not seen it since. I have not seen it for six years.

Q. Did you ever see the books that the other trustees kept?

A. I saw Brothers Wiggins' and Minor's books before the trouble arose in the church, but I have not seen them since.

Q. You say in answer to question number one of the questions asked you in your examination in chief, "from the time I was elected
113 a trustee I kept an account right straight through;" did you keep an account of all the money that was paid into the treasury and of all that was paid out?

A. Yes, sir.

Q. Will your books show that?

A. The book will show that. I cannot tell how much was paid in, because it has been so long now since I saw the book; but that will show.

Q. Did you ever put any marks in that book of yours since the suit begun about this church.

A. I do not know. I have not written a scratch in it since the trouble arose which I ought not to have done. On one occasion there was a note paid or some money paid on a note, and I paid it over to Brother Bouldin at his house a little before the trouble arose, and I got a receipt

for it. In moving about I suppose I lost it, and it has never been entered in the book.

Q. How much was that?

A. I do not remember exactly how much it was—some twenty-
114 five dollars or thirty dollars—and I never thought anything more about it myself. Because I lost the receipt, it was never entered in the book.

Q. What note was it paid on?

A. The money was paid on one of the $400 notes.

Q. Who was present when you paid that money?

A. Mr. and Mrs. Bouldin.

Q. Mr. Bouldin is here; Mrs. Bouldin is dead, is she not?

A. Yes, sir.

Q. And you have no account of that, either in the books or the receipt?

A. No, sir; I had a receipt.

Q. Have you a receipt?

A. No, sir; that was the only receipt I ever got.

Q. How was this money collected that you say you kept an account of, and from whom was it collected?

A. It was collected in the church. Whenever Mr. Bouldin said there was such a debt to be paid, and the church was interested, they went to work and collected the money, and it was paid.

115 Q. How much of the money was paid out to defray the current expenses of the church—wood and coal and sexton and other expenses necessary?

A. I do not know exactly. The book will show how much was paid out for bread, wine, and coal, and all the expenses. It has been so long—about six years—that I cannot tell.

Q. Do you know when the $25 or $30 was paid to Mr. Bouldin?

A. It was paid a little before the split. That was the last note, or the last payment on the note. That was paid on one of the $400 notes.

Q. Did you have that book at the time it purports to bear date?

A. Sir?

Q. Did you have this book—this book marked J. H. L., No. 8, referred to in your examination in chief?

A. Did I have it?

Q. Yes, sir.

A. At my other examination?

Q. Did you have it in your possession at the time it purports to have been written?

A. Yes, sir; I wrote it all.

Q. You wrote all in this book?

116 A. Yes, sir; except some few pages.

Q. Did you do that writing on the first page?

A. Yes, sir.

Q. Is there anybody else's writing on that first page but yours?

A. No, sir.

Q. Was this book kept by authority of the church by you, or did you keep it individually as a trustee?

A. All the trustees kept a book, and all the money transactions were entered in this book. The clerk also kept a book.

Q. Was not this a private book of your own, just kept for yourself?

A. I did not keep it for myself; I kept it for the church.

Q. When did the church authorize the trustees to keep a book?

A. I don't know. The church elected them trustees, and authorized

them to keep the proceedings of the church; and, of course, they could not do it without a book.

Q. Well, you had a clerk, did you not?

A. Yes, sir.

117 Q. Will you look at that page of the book, the second page on which there is writing, and say whether it is in your handwriting (handing witness book marked J. H. L., No. 8)?

A. Whereabouts, sir?

Q. Any of it. Look at the whole page.

A. Some I wrote; and then there is some long and some short.

Q. What do you say about that? I asked you if the writing on the second page is your handwriting—that (indicating).

A. Yes, sir; that is mine (indicating on the book), and that is mine (indicating).

Q. Well, is there any of it that you did not write?

A. Yes, sir; some of it I did not write.

Q. Now, I will just turn over here, and ask you if the handwriting—the book is not paged—if the writing on both of these pages, beginning on the third page where there is writing, down to the fourth page—tell me whether that is in your handwriting or not. Look over both pages.

A. Yes, sir; that is my handwriting.

118 Q. Well, what do you say of that on the other side?

A. That is mine; that is nothing but the totals of amounts that has been paid out; that's the same writing.

Q. Is it all in your handwriting?

A. Yes, sir.

Q. Now, I want to ask you if these figures here have not been changed since the original amount was put down, and is it not palpable to see from the naked eye that it has been written over again?

A. Well, I do not know; these are exactly like my figures, for I make a very long five.

Q. Has not that which stands for 58 been made or changed from 18? Does it not appear so from your naked eye?

A. I do not know; it's a little blurred there.

Q. But don't you see a "one" there where the "five" is over it? And don't you see where the 13 is changed to 55?

A. I don't know.

Q. Well, I ask you if it is not a fact?

119 A. When I am writing very fast the ink runs down and spoils the paper.

Q. Now look again and say whether that page——

Mr. MOORE. We had better get the stenographer, if you have no objection, to page this book, so that we can have a convenient reference.

Mr. WILSON. I have no objection. I expressed that wish before, but your associate, Mr. Carrington, objected.

(There being no objections the auditor caused the book marked J. H. L., No. 8, heretofore used by counsel, to be paged, such pages whereon there is writing.)

By Mr. MOORE:

Q. Look at that book, on page 6, and say whether that is your handwriting or not?

A. Yes, sir.

Q. Turn over and see if the other is, on page 7?

A. Yes, sir.

Q. All of it?

A. Yes, sir; all that is my writing.

120 Q. Now look down there and say if that is your writing (indicating)?

A. Yes, sir.

Q. Is that pencil mark yours (indicating)?

A. Yes, sir; that was made when I was examined before.

Q. You did that when you were examined as a witness before?

A. Yes, sir.

Q. What is that intended for (indicating on the 14th line, page 8)? What are the figures representing dollars? What sum are they intended to represent?

A. That was intended for $155, but it is bad writing.

Q. Now, if you remember, will you tell me what that was intended for (indicating)? Was it intended for a name?

A. I intended it for "note."

Q. Now this is October; will you tell me if there ever was at the end of any one month paid into the church and entered on the book $155 while you were there?

A. Yes, sir; the church collected all the money. Sometimes we would collect more than others. When there was a subscription taken

121 up we would put in extra dollars, of course, and all that was put down in the book.

Q. Have you any recollection independently of what this book shows that there was $155 paid at the time this purports to have been paid in October? I do not know what year, for the book does not show.

A. I do not know what it was paid for.

Q. But I say, have you a recollection of the sum?

A. Of the $155?

Q. Yes, sir.

A. I do not know, really; at that time they hardly ever paid out less than $100 when they took action on a note. Twenty-five dollars was the smallest amount that we paid on any note. When any account came due $25 was the smallest amount we paid except for bread and wine, coal and wood, and so on.

Q. Now, answer me this question: What was that intended to represent? Was it not intended to represent $5.55, and has or not that "one" and "dot" been put there since?

122 Mr. WILSON. I object to that question, because it is an imputation against the witness or clerk and officers of the court, and ought not to be made by or on behalf of the defendant.

A. Well, I do not know; this book has been from me so long. That is more than I can say, whether it has been altered or not. Of course I know my figures when I see them.

Q. Will you please look at page 9 now and tell me whether that is in your handwriting?

A. No, sir; that is not my writing.

Q. Do you know whose it is?

A. That is Brother Bouldin's, I think. The book was at his house a long time.

Q. Look at the lines consecutively from 1 down to the 24th, and say whether it is in your handwriting. The balance is in Brother Bouldin's?

A. Yes, sir.

Q. Now on the last line that you see writing, and which you say is yours, what is the reading, and what are the figures?

A. They read, "paid for breaking of something, 10 cents."

123 Q. You are asked by Mr. Wilson "Look at that book, and see if you have there or can find there any report of the amount due Mr. Bouldin?" Your answer is, "Yes, sir; I do." Now I want to see that. Look at the book and show it to us.

A. He said the church cost $15,000; paid $12,025$\frac{25}{100}$; balance due, $2,494$\frac{08}{100}$. That is all of it.

Q. What page is that on?

A. It is on page 3.

Q. Well, did you add up the figures there yourself, and make them?

A. I put them down.

Q. Who added them up, if you did not?

A. I put them down and added them up.

Q. What was the $15,000 for?

A. Brother Bouldin's reply to the church was, time and again, that the church cost $15,000. The church agreed to pay him $15,000.

Q. Did you put that down in the book?

A. Yes, sir.

Q. Did the church agree to pay him $15,000?

A. Yes, sir.

Q. Then what was the $12,000 for?

124 A. That was paid.

Q. But what was it for?

A. For the church.

Q. In what way did they pay the $12,000?

A. Upon the building of the church it was decided that a subscription be taken up by the congregation, which was done, and the money was turned over to Mr. Bouldin to pay for the church.

Q. What did this $15,000 include? Did it include the church building as well as the ground it stood upon?

A. The $15,000 included all.

Q. Do you know what time it was that that collection was made, and it was ascertained that the balance due Mr. Bouldin, as you say, was $2,400?

A. I do not know exactly. They had a settlement, but I do not know when it was. They had two settlements. After that settlement, that was the amount. Brother Bouldin was one of the trustees. He counted himself one of the head trustees. He always agreed that that was the amount due him, and, further than that, the book was read to

125 us by Brother Bouldin. We could not keep the book right, and we all had to go to him as the head trustee to keep it right.

Q. How many notes were given to Mr. Bouldin?

A. There were six $100—not six—five $100 notes, and one for $120, making a total of $620; there were four $400 notes.

Q. Four $100 notes?

A. Six $100 notes and four $400 notes. The four $400 notes were on the church, and the six $100 notes were on the ground.

Q. Did you sign those notes?

A. I do not know correctly whether I signed those $100 notes. I know that I signed the $400 notes. I cannot say whether I signed the others or not.

Q. Was that at the time you made these figures in this book?

A. I do not know, really, at what time I made them, whether it was before or after. I cannot tell you.

Q. You have said that you wrote this, all of it, I believe. Look and see if you did not say you wrote all of that. Say whether you did

126 or did not. I forget now whether you said you did or did not. It is the last page of the writing.

A. That is mine (indicating) and that is mine (indicating). Yes, sir; that is the last writing I did. I think I did that at Mr. Bouldin'.

Q. Now, will you please tell the auditor what amount of dollars and cents each one of those figures stand for? What are they? I want you to say what you intended them for. Read off the items, if you please (indicating on the book).

A. They were intended for 50 cts., $1.00, $1.00, 50 cts., $1.00, $1.00, $1.00, all straight along—50 cts. and $1.00.

Q. You have said there were six $100 notes and four $400 notes?

A. Yes, sir.

Q. That was on the last settlement with Mr. Bouldin, was it?

A. We gave him——

Q. I want you to answer my question, whether you had more than one settlement with Mr. Bouldin.

A. We had two settlements. I was never present at either of
127 those settlements, but I am confident that the church had two settlements with him.

Q. Did you see those settlements?

A. I do not know, really, whether I did or not.

Q. Were you present at either of them?

A. No, sir; I said that I was not present at either of the two settlements.

Q. Where were the notes given?

A. The notes were given at Mr. Barnaclo's office, I think.

Q. Did he write them?

A. Indeed, I do not know. Mr. Bouldin told me that he wanted me to go down the street with him, and I went and signed the notes. I signed four, to the best of my recollection. Mr. Barnaclo refused to let me sign all the notes, because he did not have all the trustees together. Mr. Bouldin urged him to let me sign them, because he could not get them all together, and he let me sign those four, and the other trustees were to come to-morrow or the next day.

128 Q. Well, these notes that you have spoken of, the four $400 notes and the six $100 notes, are they all the notes that you know anything about?

A. They are all the notes that the church gave him.

Q. Do you know when the deed was made from Mr. Bouldin to the church for the ground?

A. No, sir; I do not know exactly. I do not think it was at the time I was trustee. I think they were signed by the other trustees.

Q. You think you did not sign them?

A. I did not sign the deed; Mr. Middleton and the rest of them signed it; I was not a trustee at the time.

Q. Signed to deed made to you by Mr. Bouldin for the church?

A. Yes, sir.

Q. Who wrote that deed, do you know?

A. No, sir; I do not know. I was not a trustee, and I did not know they had a deed before I became a trustee. I am not able to tell you anything of the deed.

Q. Have you any record of the amount of money paid to Mr.
128 Bouldin on account of those notes, any written record of it?

A. I think you will find it on the books there, somewhere; I have written some place there that we paid the four-hundred-dollar

notes, but it has been so long now I cannot recollect it; but I know that some of them were paid.

Q. Did you ever make any of the payments yourself?

A. No, sir.

Q. Well, do you know anything about the payments on any of those notes except such memorandum as you find on the book?

A. Yes, sir; one of the $100 notes was paid in full, and to the best of my recollection 70 or 75 dollars was paid on another one of the $100 notes. That was stated clearly at a regular church meeting which they had once a month.

Q. Who paid that $100 which you speak of?

A. I do not know who paid them.

Q. Well, how do you know it was paid?

130 A. All the money that was collected by the church once a month—we have a trustee meeting once a month—all the money and transactions of any kind goes before the church once a month. Mr. Bouldin was present at all those meetings.

Q. Was there any money paid to Mr. Bouldin, except that that was paid to him at each of these church meetings?

A. Whenever there was any money in the treasury and Mr. Bouldin said that such and such a note was to be paid, or any carpenter's work to be done about the church, a lumber bill, or anything of that kind, the church gave him an order on the treasurer, and money was taken from the treasurer. Many times money was in the church and when we did not take it out of the church we paid it over to Mr. Bouldin for the expenses of the church.

Redirect examination by Mr. WILSON:

131 Q. You said that the books would show all of the money that was collected in the church. Do you mean that or not to include the money that was collected by subscription or begging outside?

Mr. MOORE. I object on the ground that it is leading.

A. No, sir; the money that was collected in the church I kept, but the money that was collected outside the church I really did not keep. I do not know how much money was collected outside of the church.

Q. You said you made a payment on one of the notes, the $400 note, I understood you, to Mr. Bouldin, and took a receipt; that you lost the receipt, and that the amount was not put down in that book?

A. No, sir; it was not entered on the book at all.

Q. How much was that?

A. $30; that was a little before the trouble arose in the church, about two weeks before, I think. It was not entered on the book.

132 Q. Look on the book on page 4, where it is said that the figures have been changed at the foot of the page, and say whether they have been any changes made in those figures after the time they were originally set down by you?

A. They don't seem to be changed to me; they look natural to me; they were made six years ago.

Q. Have they or not been changed, if changed at all, since the commencement of this suit, or since the split?

A. No, sir.

Q. How much was it that you entered in the book that Mr. Bouldin said the church cost?

A. His reply was to the church, I do not know whether it was at a regular church meeting or not, that the church cost $15,000, and there was $12,025.20 paid to him.

Q. And did he say what was owing?

A. The balance due, $2,400.

Q. Did you get that from him, or do you know it of your own knowledge?

A. Well, that was done at a regular church meeting. Mr. Bouldin was a head trustee, and was always present at the meetings. He
133 agreed that the book was right and that the payments were right, and he never changed them.

Q. You did not quite get my question. I asked you whether the church cost $15,000.

A. That is his statement. Mr. Bouldin said that the church cost $15,000, and the church agreed to pay him that amount.

Q. And of that amount of money that the church cost, did he say how much the church had paid him?

A. He said in the regular church meetings, time and time again, that we got along splendidly, that we paid 12 thousand and some hundred dollars; balance due some twenty-four hundred, and the church was very well satisfied with him. All along they knew how much they owed him until he began to say that the church owed him $2,600 and we could not trust him, and that is the way the trouble commenced; getting so deep in the matter we could not reduce the bill.

Q. Do you remember when those notes were signed at Mr. Barnaclo's?

134 A. I do not know when it was exactly, but I think it was in the spring of the year.

Q. You remember the time?

A. O, yes; I remember the time well.

Q. Was that before or after the settlement you spoke of?

A. I do not know whether the notes were given before or after the settlement. That I cannot exactly say. Some of the other trustees might give you an account of it. It has been so long now, and I have no record of it on the book.

Recross-examination by Mr. MOORE:

Q. Who was the treasurer at the time you made these figures you have been speaking of in your examination by Mr. Wilson?

A. I think that Brother Winters was treasurer.

Q. What is his first name?

A. Indeed, I do not know; I think it was William Winters. I do not know for certain that Brother Winters was treasurer all the time I was trustee. I think there was another brother treasurer before him, but I have forgotten.

HENRY WATSON.

Sworn to and subscribed before me this 7th day of January, 1874.

R. LEECH,
Auditor.

135 Met pursuant to adjournment. Present, Thomas Wilson, esq., and O. D. Barrett, esq.

THOMAS WILSON sworn & examined:

The WITNESS. I have been attorney for the complainants in this case ever since the case began. I did not prepare or file the original bill; but I was attorney for them before the bill was filed, and owing to my business another gentleman prepared and filed it. These books that have been filed in the clerk's office under an order and rule of the court,

and which are now before the auditor, have been in the possession of the clerk, I believe ever since they were delivered under the operation of that order, some time in 1867, prior at least to the filing of the
136 answer in this case. They may have been taken out of the clerk's office for various purposes while engaged in the preparation and prosecution of the case, but they have been, theoretically, in the clerk's office all the time. Sometimes we may have had them for the purpose of introducing them before the commissioner or before the court. They were also taken out for the use of the supreme court under stipulation by counsel. There has been a great deal said with regard to alterations, erasures and interlineations, &c., with regard to these books. I want to say that I have never known or heard of any such thing having taken place since the day that they were filed in the clerk's office, nor before, for that matter. I have no belief that there has been anything of the kind ever done, save and except places that have been marked in
137 them and on them when they have been introduced in evidence, and for the purpose of identifying certain principal places that were being testified about. Also, it is possible that I may have made and maybe the other side have made pencil-marks as in the form of brackets, for the purpose of calling attention to certain parts of them to be used in argument. There is in Exhibit E, Defendant's Exhibit E, (that is the designation it has always been known by) some special marks that I believe have been made in the handwriting of Mr. Bouldin since the books were filed, but they do not amount to any very certain sum either way. Save and except those marks in brackets that I have spoken of, the check marks that may have occasionally been made on the margin, and the marks that have been made before the commissioner. I have no knowledge of any tampering with these books, nor
138 that there have been any alterations, erasures, interlineations or changes made in them except the one which I shall now proceed to describe. There are two pages, two leaves, which come next after May 10, 1867—by the way, on that page of May 10, 1867, (they are not paged by numbers) is some of the writing that I suppose to have been made by Mr. Bouldin since these books were filed. I do not remember of their having been upon them before—I said the two leaves immediately following the entry of May 10, 1867, in the bound book of that Exhibit E, when the book was presented to the commissioner, and when t was presented before the equity court upon the argument in this case, those two leaves were pasted solidly and firmly together. It appears in testimony and it is admitted to have been done by or under the
139 direction of James H. Lee. Whether he did it or not I do not know; but up to the time of the hearing of the case those two leaves were pasted firmly and tightly tagether, so that no person could see what there was written between them. Upon the hearing, it being adjourned from one evening till the next morning, Judge Olin, who was then sitting as chancellor, directed me verbally to take this book home with me and take such means as I might be able and as were necessary to separate the two leaves. In accordance with that order I took the book home, and by steaming and boiling I succeeded in getting the leaves separated, though in doing so they were very much torn. I put them together as well as I was able and returned them into court the next morning. I made a copy of what I found upon the inside of
140 those two leaves as well as I was able to decepher it. I now present that copy and ask that it may be used by the auditor in whatever way he may see fit. It is as follows:

JUNE 8, 1867.

"The regular church-meeting opened by prayer and proceeded to business. The clerk beant (be not) present.

"A. Bouldin was chosen for clerk to king of enny (any) juse (dues) collected paid over to the treasurer of the church.

"The church turning out Louisa Scott. The custion (question) of Brother Robinson not decided for the of paying the debts on the church and calling some minister to the charge of the church. Not all the members be present to decide, it adjourn to meet some other time.

"No more done. The meeting closed with benediction.

"MANSON ROBINSON,
"*Treasurer.*
"ALBERT BOULDIN,
"*Pastor and Moderator.*"

141 The original is still in the book and is now before me. The above copy was only made for convenience.

I have deemed it proper to make this explanation, that these torn leaves may be accounted for. It was not possible to account for them since the time they were torn out; I should say that in taking them apart they were somewhat torn. They came out of the book and they are now loose leaves. They should be inserted after date of May 10, on a page marked at the top "April 14, 1867, 2 Sunday," and in figures "15." On the next page succeeding them, a course of charges against Mr. Bouldin. Beyond these alterations that I have described I know of no alterations, erasures, interlineations, or changes of any kind that have taken place in the books or records in this case.

THOMAS WILSON.

Sworn to and subscribed before me this 16th day of Feb., 1874.

R. LEECH, *Auditor.*

142 Mr. WILSON. I want to offer in evidence before the auditor these court papers, court records in the case No. 3029, another case between very nearly the same parties, not entirely, about the same property.

Mr. BARRETT. I object to that. We do not know what they are. If it is not between the same parties and about the same property, it is not evidence. I therefore object to their being introduced in evidence.

Mr. WILSON. It is a case of precisely the same character about the same property, and is a continuation of the same suit.

143 J. W. BARKER, a witness on behalf of the complainants, being duly sworn and examined, deposes as follows:

Q. (By Mr. WILSON.) State your age and residence.
A. I believe I am about 53 years old—nearly so. I reside 1106 H st.
Q. In this city?
A. Yes, sir.
Q. How long have you resided in this city?
A. Thirty-odd years.
Q. What business are you engaged in?
A. I am a carpenter and builder.
Q. Are you a master builder or a journeyman?
A. I am a master builder.
Q. How long have you been such?
A. Since 1843—about 30 years.

Q. Have you been carrying on business since that time in Washington?

A. Yes, sir.

Q. What has been your experience and knowledge with regard
144 to the cost, expense, value, &c., of the erection of buildings in this city?

A. Well, I have for the last thirty years been in that business, and profess to know as much as the next common man about such things; I have been engaged in the business over thirty years.

Q. Have you examined, had any opportunity for examination of this church building on the northeast corner of 4th and L streets, in this city?

A. Yes, sir; I made an examination of it to-day.

Q. Did you go through the church?

A. With whom?

A. With that gentleman there [pointing to Mr. Bouldin.]

Q. Mr. Bouldin?

A. Yes, sir; that is the gentleman.

Q. With what view did you make that examination; for what purpose?

145 A. To state the amount that it would cost to build a church like it; being called upon by Mr. Wilson to put a value upon the church, I suggested to him that the best plan would be to make an examination of it to arrive at any correct conclusion about the matter, and did so to-day.

Q. How did you get entrance to the church?

A. I found the church and I went over to that gentleman's house and got him to open the door for me; he and I went together and examined the building.

Q. Well, did you form any opinion or judgment as to the value of that church building?

A. I made an estimate of what it would cost to build such a church as that; it is a very plain church; I made an estimate of what it would cost to build one at this time.

Q. That is, the building without the ground?

146 A. Yes, sir.

Q. Will you state what that estimate was?

A. I made it $7,000—$6,800—and I come to the conclusion that $7,000 would be a fair price for building such a church as that now.

Q. Are you acquainted with, and could you state what would be a fair rental value for that church, taking into consideration all the circumstances and surroundings of it as it is at the present time?

A. Well, I should suppose about six per cent. on the cost of the church would be a fair rental value, as there is no taxes to pay; church property is exempt; and I should say six per cent. on the cost of building the church.

Q. When you say on the value, do you mean on the value of the church building alone, or do you mean on the value ot the building and ground together?

147 A. The building and ground together.

Q. Do you know anything in regard to the value of ground?

A. No, sir; not in that neighborhood.

Q. You express no opinion, then, in regard to the value of the ground?

A. No, sir; I do not know how large the ground is.

Cross-examination by Mr. BARRETT:

Q. Was your estimate made by items?

A. Yes, sir.

Q. Have you that estimate with you?

A. No, sir, I have not; I did not bring it with me; I just made it this evening; it was about two o'clock when I got down to the church, and I made it at my shop; I did not suppose it was necessary to bring the items down; I recollect some of the items; I recollect particularly about the brick work; I make 85 thousand brick in it; it is a brick building with shingle roof on it.

148 Q. What is the size of the building?

A. The size of the building is 55 by 33; that is the size that was represented to me by the gentleman (Mr. Bouldin); I did not measure it at all.

Q. What is the highest of the walls?

A. The basement story is ten feet high, and the audience is fifteen.

A. What is the height of the wall from the foundation to the top?

A. It is fourteen and sixteen, thirty-two feet high; I estimated the gables at ten feet high; there are two gables to that church; I have estimated the basement at fourteen feet high; it is a ten-foot story; the joist, I allow a foot for that, which makes eleven feet, and three feet below; I have allowed three feet for the foundation, making fourteen feet; the upper story is fifteen feet, and I have allowed an addi-

149 tional foot for the projection of the corners, which makes thirty feet; I had no means of ascertaining how deep the foundation was, but I have gone three feet below the church floor, which would be, if the foundation is as good as we generally have to build on, about a foot more than we generally allow for those things.

Q. You allow, then, for the gables, ten feet to the point?

A. Yes, sir.

Q. Making a portion of the wall 33 by 10.

A. Yes, sir; the two put together.

Q. How many bricks do you make to the foot?

A. Well, our estimate is, for the 14 inch wall, 18 brick to the foot, and for the 9 inch we estimate 12, to every brick in thickness, that is a half brick.

Q. You make a deduction for the doors and windows?

A. We generally do.

150 Q. Did you in this case?

A. I did, sir; I will state further that there was a master bricklayer in the shop when I made my estimates, and I called his attention to it, and he made an estimate; 85 thousand brick is a full calculation for it; I could not allow any more, if I were to build it myself now.

Q. What do you estimate those by the thousand?

A. Twenty dollars a thousand, is the price; I paid that this summer; that is for the brick, laying them, mortar and all.

Q. How much do you estimate the flooring and timber at?

A. I have put my flooring in there at $20 a square; that is my recollection, 20c. a foot; that is the flooring and joist.

Q. How have you estimated the plastering?

A. By the yard.

Q. How many yards?

A. There is about 670 yards—a fraction under 700 yards; that is my recollection.

151 Q. How much a yard?

A. Fifty cents a yard, I put it at. The ceiling in the audience room is not plastered, it is boarded.

Q. How is it in the basement-room?

A. It is plastered. I calculated the whole, basement, plaster, and all, except the ceiling in the audience-room.

Q. What price do you estimate the windows?

A. The windows I estimated at $10 a piece; that is my recollection now. I may be a little out of the way with those things; it is just from memory that I speak.

Q. The doors?

A. I put those doors at, I think, $15. They are very ordinary doors.

Q. How many windows are there?

A. I think there are twenty-one windows; that is my recollection. The windows are 10 by 16.

Q. You say the windows average 10 by 16?

152 A. Yes, sir; that is my recollection now. I measured them and made a memorandum. The windows, there are twelve-light windows 10 by 16.

Q. How do you estimate the roof?

A. I estimated the roof by the foot.

Q. How much a foot?

A Thirty cents a foot.

Q. What kind of a roof is it?

A. Of course there was no way for me to see how the roof was built, and the span of it. I estimated for the girders that run across the house at that price. We take in a very fair roof that would span a building of 50 or 60 feet—50 at least.

Q. Does this ceiling seem to be placed above the top of the walls, any part of it?

A. Not that I know of; my recollection is that the rafter would set right on the top of the wall. Instead of cutting our timber off we run it over the wall up to the top. We place a timber there eight

153 or ten or twelve inches in width and leave room to run up to the top of that. Without knowing what the brickwork was there, those purlins would be probably eight or ten inches.

Q. What purlins?

A. The ceiling joist.

Q. How much do you allow for the work?

A. Which part of the work?

Q. The work of finishing the house.

A. I put that altogether. I estimated all the materials and work altogether by the foot.

JAMES W. BARKER,
1106 *H Street.*

Sworn to and subscribed before me this 16th day of February, 1874.

R. LEECH,
Auditor.

154 BRAINARD H. WARNER, a witness on behalf of the complainants, being duly sworn and examined, deposes as follows:

By Mr. WILSON:

Q. Where do you reside?

A. Washington, D. C.

Q. How long have you resided in the city of Washington?

A. Ten or eleven years.

Q. What business or profession are you engaged in?

A. I am a real estate broker.

Q. Are you acquainted with the prices and values of real estate in this city?

A. Yes, sir.

Q. Are you acquainted with the lot on the corner of 4th and L streets, on the northeast corner, on which the Bouldin church property rests?

A. Yes, sir; I know the property; I attended divine service there.

155 Q. Please give to the auditor your opinion of the value of the ground in the lot on that corner.

The WITNESS. What is the size of that lot? It has escaped my memory now about the size of the lot.

Q. Thirty-four by 64, or 34 by 84.

A. Eighty-four feet running back.

Q. It is 34 feet on L street and 64 on 4th street, or there is a controversy as to whether it is not 84 feet on L street.

A. You want to know my opinion as to the value?

Q. Yes, sir; I suppose the shortest way is to give it per foot.

A. Well, I think it would bring at auction 40 cents a foot, and at a private sale probably 55—from 55 to 65 cents; that is an estimate.

Q. What is a fair valuation of the lot per foot, I mean?

A. Well, a fair valuation of that lot at the outside figure, I know is sixty-five cents.

156 No cross-examination.

BRAINARD H. WARNER.

Sworn to and subscribed before me this 16th day of February, 1874.

R. LEECH,
Auditor.

157 *Plaintiffs' exceptions to auditor's report.—Filed Dec.* 10, '75.

In the supreme court of the District of Columbia.

JOSEPH ALEXANDER ET AL. *vs.* ALBERT BOULDIN ET AL. } No. 1054. Equity. Docket 8.

The plaintiffs file this their exceptions to the report of the auditor filed November 10th, 1875, and says:

1. That the auditor erred in not allowing rent and interest from July 28, 1867, the date of the forcible entry of the church by the defendants, instead of allowing from September 28th, the date of the commencement of the suit.

THOMAS WILSON,
Solicitor for Complainants.

158 *Defendants' exceptions to auditor's report.—Filed Dec.* 8, 1875.

In the supreme court of the District of Columbia.

JOSEPH ALEXANDER ET AL. *vs.* ALBERT BOULDIN ET AL. } 1054. In equity. Doc. 8.

The defendants, Bouldin and others, except to the report of the auditor herein returned and filed on the tenth day of November, 1875, for the following reasons, to wit:

First. That the auditor erred in not accepting the true boundary of the lot in question according to the *to the* calls and description in the deed from Varnell to Bouldin and from Bouldin to the then trustees, but took the oral testimony of witnesses to establish the to said lot.

Second. That the auditor erred in refusing to give said Bouldin credit for the notes which it is admitted were executed to Bouldin upon a settlement made between said Bouldin and the trustees, for money which he had at that time actually expended.

159 Third. That the auditor erred in deciding that when Bouldin made the purchase of the lot from Varnell, he purchased the whole of it at the instance and for the benefit of the 3rd Baptist Church.

Fourth. That the auditor erred in deciding and charging the defendants with rent for the premises.

Fifth. That the auditor erred in his estimate of the rent for the said premises because he had no competent proof before him as to the rental value thereof.

Sixth. That the auditor erred in not giving Bouldin proper credits for his services in behalf of said 3rd Baptist Church and for the money expended by him in behalf of the same.

Seventh. That the auditor erred in his statement of facts as well as his conclusions in several parts of his report.

Eighth. That the auditor erred in the amount charged against Bouldin as collected by him to be credited on the notes executed by the plaintiffs to him.

160 Ninth. That the auditor erred in allowing interest against Bouldin on the several amounts for rents charged against him.

Tenth. That the auditor erred in the several amounts allowed the stenographer, Mr. Boswell, for taking evidence and charged to Bouldin.

Eleventh. That the auditor erred in charging Bouldin with twenty feet of ground, the difference between sixty-four and eighty-four feet in the rear of the church lot in addition to the rents thereof.

Lastly. That the auditor has manifestly erred in his report in many particulars besides those already pointed out in these exceptions.

Messrs. BARRETT, MOORE & NEWMAN,
For Bouldin.

161 *Decree in special term.—Passed Mar.* 6, '77.

In the supreme court of the District of Columbia, May 8th, 1877.

JOSEPH ALEXANDER ET AL.
vs.
ALBERT BOULDIN ET AL. } 1054. Eq. Doc. 8.

This cause coming on to be heard upon the report of the auditor of November 10, 1875, and the exceptions filed thereto, after being argued by counsel, it is this 8th day of May, 1876, ordered, decreed, and adjudged as follows: The exception to said report filed by the complainants is overruled. Second. The exceptions of the defendants are disposed of as follows: Those exceptions to the allowance by the auditor for the 20 feet front of ground fronting on 4th st., being 680 square feet at 60 cents per foot, making 408 dollars, and interest thereon, $195.84, be sustained; and the said item stated by the auditor in favor of the complainants is hereby disallowed.

The third and tenth exceptions of the defendants are overruled. The

exceptions in respect to the allowance of rent and interest thereon are sustained, and the item of rent and interest stated in the auditor's report is disallowed.

162 2. The case is returned to the auditor with directions to restate the accounts between the said Albert Bouldin and the plaintiffs, as trustees of the said church, and the trustees of whom they are the successors, to report the amounts of money received by said Bouldin from the said church and from other persons on behalf of said church, and the amounts to which he was entitled for his services in behalf of said church and has expended therein and about the same, and to state the balance due either way.

The auditor will take the promissory notes described in the bill and answer as having been given by the said church to defendant Bouldin, when the same shall be presented and proved by him as the basis or starting point. He is directed to calculate the amounts due on said notes, deducting all credits and payments thereon, not excepting those allowed in his former report of Nov. 15, 1875. He is directed to regard those notes, when presented and proved as aforesaid, as a settlement in full between the parties of all matters of account up to and including the 20th day of December, 1865, the date of the last notes given; and he will confine his examination to accounts and indebtedness arising subsequent thereto.

163 3. For this purpose he may consider the testimony taken in the cause, and he may also consider all legal and proper testimony taken before the auditor upon the former orders of reference, but he is directed not to allow or permit further evidence to be taken on behalf of the defendants, except that necessary for the introduction of the notes aforesaid.

4. The motion for the suppression of the testimony filed by the complainant is continued until the coming in of the auditor's report.

5. The auditor is directed to prepare and return into court his report as required herein on or before the first day of June next.

6. This reference to the auditor being necessary by reason of the failure of the defendants to produce their testimony before the auditor in time for his former report, it is directed that this order and all proceedings thereunder be at their cost and expense.

The motion made by the plaintiffs for the issuance of a writ of possession and to put them in possession of the church property described in the original decree is hereby overruled.

164 *Complainants' appeal to the general term.—Filed June 5, '76.*

In the supreme court of the District of Columbia this 5th day of June, 1876.

JOSEPH ALEXANDER ET AL.
vs.
ALBERT BOULDIN ET AL. } 1054. Eq. doc. 8.

Now comes the complainants in the above entitled cause, and each and every one of them prays an appeal to the general term from the decree and order made in said cause by the court setting and holding the special term, which said decree and order was made and is dated May 8, 1876.

THOMAS WILSON,
Solicitor for Complainants.

165 *Order for writ of possession.—Filed Mar.* 28, '77.

ALEXANDER *vs.* BOULDIN. } 1054. Eq. doc.

Ordered, this 28th day of March, 1877, that the motion of complainants for a writ of possession be allowed and granted, and the clerk is hereby directed to issue said writ in accordance with the decree of June 2, 1869, as the same was affirmed by the Supreme Court of the United States.

A. B. OLIN,
By order of the Court.

MEMO.—Mar. 29, writ issued.

Clk.

166 *Decree.—Passed June* 19, '77.

In the supreme court of the District of Columbia, general term, this 19th day of June, 1877.

JOSEPH ALEXANDER ET AL. *vs.* ALBERT BOULDIN ET AL. } No. 1054. Eq. doc. 8.

Decree.

The above entitled cause having been heard upon the appeals of both parties from the decree of the special term, and having been argued by counsel and submitted at the last term and continued under advisement, the court made the following decree in said cause:

The court finds that there is due to the complainants from the defendants, jointly and severally, the sum of four thousand seven hundred and thirty-four $\frac{12}{100}$ dollars, as mesne profits, for use and occupation by them of the church premises during the pendency of this suit, to wit, from the commencement of the suit until March 31st, 1877, when the said premises were returned to the possession of the plaintiffs.

The promissory notes given by the plaintiffs as trustees of the church to the defendant Albert Bouldin are not included in this decree,
167 the same having been by him withdrawn from the consideration of the court. But all other claims by him made against the church or its trustees are rejected and disallowed. The item of interest on mesne profits reported by the auditor in favor of the complainants is disallowed. It is therefore ordered, adjudged, and decreed that the plaintiffs, Joseph Alexander, Henry Watson, Henry Scott, John Wiggins, John Middleton, William Laws, William J. Minor, trustees of the Third Baptist Colored Church of Washington City, have and recover of and from the defendants, Albert Bouldin, William H. Pearson, Julius Bouldin, Charles Pearson, Edward Dickson, Essex Roberts, and Manson Robinson, and each and every of them, the said sum of four thousand seven hundred and thirty-four $\frac{12}{100}$ dollars, together with their costs herein expended.

It is also ordered and decreed that the injunction restraining the said Bouldin from the collection of the notes aforesaid be and the same is hereby dissolved, as is also the injunction restraining J. W. Barnaclo,